TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER [redacted] 1920

No. [redacted]377

GEORGE D. HORNING, PETITIONER,

vs.

THE DISTRICT OF COLUMBIA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

PETITION FOR CERTIORARI FILED MARCH 24, 1921.

CERTIORARI AND RETURN FILED APRIL 18, 1921.

(27,310)

(27,010)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 924.

GEORGE D. HORNING, PETITIONER,

vs.

THE DISTRICT OF COLUMBIA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 3, 1919.

a *Transcript of Record.*

Court of Appeals of the District of Columbia, October Term, 1918.

No. 3213.

No. 21, Special Calendar.

GEORGE D. HORNING, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA.

In Error to the Police Court of the District of Columbia.

Filed October 8, 1918.
Printed October 18, 1918.

1 Court of Appeals of the District of Columbia.

No. 3213.

GEORGE D. HORNING, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Robert Hardison, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between District of Columbia, Plaintiff, and George D. Horning, Defendant, Information No. 523537, a manifest error hath happened, to the great damage of the said Defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals

may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Constantine J. Smyth, Chief Justice of the said Court of Appeals, the 1st day of October, in the year of our Lord one thousand nine hundred and eighteen.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by
CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals of the District of Columbia.

2 [Endorsed:] Filed Oct. 1, 1918. F. A. Sebring, Clerk Police Court, D. C.

DISTRICT OF COLUMBIA, Plaintiff in Error,

vs.

GEORGE D. HORNING.

In the Police Court of the District of Columbia, October Term, 1917.

No. 523,537.

DISTRICT OF COLUMBIA

vs.

GEORGE D. HORNING.

Information for Violation of Act of Congress Approved February 4, 1917.

Be it remembered, That in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

In the Police Court of the District of Columbia, July Term, A. D. 1917.

DISTRICT OF COLUMBIA, *ss:*

Conrad H. Syme, Esq., Corporation Counsel, by Percival H. Marshall, Esq., Assistant Corporation Counsel, who, for the District of Columbia, prosecutes in this behalf, comes here into Court, and causes the Court to be informed, and complains that George D.

Horning, late of the District of Columbia, in said District of Columbia, on the first day of February, in the year A. D. nineteen hundred and seventeen, and on divers other days between the said date and the filing of this information, did then and there maintain a certain place of business at 9th and D Streets, Northwest, in the City of Washington, upon the exterior of which place of business, and so as the same could be read by passersby upon the public streets of the said City of Washington, said George D. Horning did maintain and permit the following signs, viz:

3

"Warehouse."

"Formerly Loan Office George D. Horning."

"Branch Office, Dime Messenger Service, Inc., Bonded Messengers."

"Automobiles Leave Every Ten Minutes."

"Loans on Diamonds, Watches, Jewelry."

"Diamonds—Horning's Collateral Bank—Jewelry."

"Now making loans at my Virginia Office—Free automobile service between offices."

and in the exterior of which place of business did maintain and permit the following signs, viz:

"*Notice.*

This establishment is exclusively for storage purposes, and for the settlement of loans made prior to March 7, 1913; no application for loans will be received or considered here, and no examination, appraisement or valuation of pledges will be made here.

"GEORGE D. HORNING.

"DIME MESSENGER SERVICE, INCORPORATED."

said last mentioned sign being located over a certain desk in said place of business used by permission of said George D. Horning, and as his tenant for hire, by a certain corporation known as the Dime Messenger Service, Incorporated.

That the said Horning had no financial interest in the corporation known as the Dime Messenger Service, as stockholder or otherwise, except that he hired space to the corporation for its business at 9th and D Streets; that the Dime Messenger Service Corporation is a genuine and bona fide Dime Messenger Service, doing a general messenger service through the City with a branch office at said 9th and D streets, for which it paid said Horning a monthly rental, and with its main office at Number 717 Twelfth Street, Northwest in said City of Washington, District of Columbia; that at said branch office, at the times aforesaid, it received, accepted and filled orders for messenger service generally from business men and others in the neigh-

borhood, calling for the delivery by messengers of letters and parcels throughout the City to various addresses.

That said George D. Horning, at the times aforesaid, caused to be published in certain newspapers, in general circulation in the District of Columbia, the following advertisement, viz:

"Loans

Horning,

Relee, Va. (South end of Highway Bridge).

Free automobile from 9th and D Sts. N. W."

4 And in certain other newspapers in general circulation in said District of Columbia the following advertisement, viz:

"Horning.

Loans, Diamonds, Watches, Jewelry.

Free auto service from northeast corner 9th and D Sts. N. W."

That at the times aforesaid said George D. Horning also owned and maintained certain passenger automobiles, and caused the same to be operated in the manner hereinafter set forth between the aforesaid place of business, and a certain other place of business conducted by the said George D. Horning, in the County of Alexandria, State of Virginia.

That on divers days between said first day of February, A. D. 1917, and the date of the filing of this information, divers persons who desired to obtain loans of money, upon security, applied for such loans at the aforesaid place of business of said George D. Horning, at 9th and D Streets, Northwest, in the City of Washington, District of Columbia, to an agent and employee of said George D. Horning duly authorized by him to act and speak for him in the manner hereinafter set forth as acted and spoken by said agent and employee, and stated to said agent and employee in substance that they, said persons who desired to obtain loans of money upon security, as aforesaid did desire to obtain loans of money upon security, and exhibited to said agent or employee, sundry articles of jewelry, and requested of said George D. Horning, through his said agent and employee, loans of money, and offered to pledge with said George D. Horning articles of jewelry exhibited by them as aforesaid, as security for the loans of money so requested by them, and to be informed of the sums of money which would be loaned to them by said George D. Horning upon the security of said jewelry, if pledged as aforesaid, and were told by said agent and employee that said articles of jewelry could not, under the law, and would not be appraised or valued for loan purposes, in the District of Columbia, and that no loans upon the security thereof would be made in the District of Columbia, but that said persons so offering the same as security for loans might either send said articles of jewelry from said

place of business of said George D. Horning, located at 9th and D Streets, Northwest, in the City of Washington, District of Columbia, for hire to be paid by the sender, by the agents of the Dime Messenger Service, Incorporated, located in said last mentioned place of business, as aforesaid, or take the same in person therefrom to the place of business operated by said George D. Horning, in Alexandria County, Virginia, as aforesaid, in any of the aforesaid passenger automobiles operated by said George D. Horning, without charge or payment of any fare, compensation or reward for being carried and transported in said automobiles, from said place of business of said George D. Horning, in the City of Washington, District of Columbia, to his said place of business in Alexandria County, Virginia, and return; or might take or send said articles desired to be pledged as aforesaid, by public conveyance or otherwise, to said Virginia office of said George D. Horning, at which last mentioned office all loans were made.

That thereupon certain of said persons who desired to obtain loans of money as aforesaid, delivered their respective articles of jewelry to the agents of said Dime Messenger Service, Incorporated, at its aforesaid place of business in the office or place of business of said George D. Horning at 9th and D Streets, Northwest, in the City of Washington, District of Columbia, to be taken or carried therefrom by messenger in the employ of said Dime Messenger Service, Incorporated, to the aforesaid place of business of said George D. Horning in Alexandria County, Virginia, and said persons, at the time of delivery by them of said articles of jewelry to said agent, respectively stated to him the amount of money which they desired to borrow upon the security of said jewelry, and each was given by and received from said agent of the said Dime Messenger Service, Incorporated, a ticket, or receipt, in writing or in printing, or writing and printing, containing a number for the purpose of identifying the article or articles so receipted for; and thereafter said articles were taken or carried by said messenger, to the place of business of said George D. Horning, in Alexandria County, Virginia, where they were received and pawn tickets therefor delivered to said messenger, together with the respective sums of money loaned upon the security of said articles, which pawn tickets and sums of money were by said messenger brought back to the aforesaid office of said Dime Messenger Service, Incorporated, in the City of Washington, District of Columbia, and by said corporation delivered to the persons entitled thereto, who surrendered therefor the identification receipts aforesaid, and paid the said Dime Messenger Service, Incorporated, for said messenger service, the sum of ten cents. And others of the persons who desired to obtain loans of money as aforesaid, took their said articles which they desired to pledge as security for said loans, in person, in the passenger automobiles operated by said George D. Horning as aforesaid, and were carried and transported in said automobiles, without expense to them, by invitation of said George D. Horning, as aforesaid, and with his employees in charge of said automobiles, from his said place of business at 9th and D Streets, Northwest, in the City of Washington, District of Columbia, to his said

place of business in Alexandria County Virginia, where they and each of them obtained from said George D. Horning, loans of money upon the security of their respective articles of jewelry, which they then and there respectively pledged and pawned with said George D. Horning, and received therefor written or printed, or written and printed, pawn tickets for the purpose, among others, of identifying said articles and facilitating the redemption thereof, and thereupon were carried and transported, in said automobiles, by invitation of said George D. Horning, from his said place of business in Alexandria County, Virginia, to his said place of business at 9th and D Streets, Northwest, in the City of Washington, District of Columbia, or elsewhere in the said District, without demand of them or payment by them of any fare, compensation or reward for being
6 carried and transported in said automobiles as aforesaid. And thereafter, the persons who had obtained from said George D. Horning, loans of money upon security in the manners and by the methods hereinbefore described, applied at the office or place of business aforesaid in Washington, District of Columbia, to redeem their said respective pledges, and thereupon were informed by the agent and employee of said George D. Horning, authorized as aforesaid, that said pledges could be redeemed only at the place of business of said George D. Horning in Alexandria County, Virginia, and that said persons so applying to redeem said pledges could do so by sending their respective pawn tickets from said place of business of said George D. Horning, located at 9th and D Streets, Northwest, in the City of Washington, District of Columbia, for hire to be paid by the senders, by the agents of the aforesaid Dime Messenger Service, Incorporated, located in the said last mentioned place of business, as aforesaid, or take the same in person therefrom to the place of business operated by said George D. Horning in Alexandria County, Virginia, as aforesaid, in any of the aforesaid passenger automobiles operated by said George D. Horning, without charge or payment of any fare, compensation, or reward for being carried and transported in said automobiles, from said place of business of said George D. Horning, in the City of Washington, District of Columbia, to his said place of business in Alexandria County, Virginia, and return or might take or send articles desired to be pledged as aforesaid by public conveyance or otherwise, to said Virginia Office of said George D. Horning, at which last mentioned office all loans were required to be paid. And certain of said persons who had procured loans as aforesaid, sent their respective pawn tickets hereinbefore mentioned, by messenger in the employ of said Dime Messenger Service, Incorporated, from its aforesaid place of business in the office or place of business of said George D. Horning, at 9th and D Streets, Northwest, in the City of Washington, District of Columbia, to the place of business of said George D. Horning in Alexandria County, Virginia, together with the principal of thei- respective loans and interests thereon at the rate of three per cent per month, or fractional part of a month, from the respective dates of said loans to the dates of payment aforesaid, which principal and interest were paid to and received in the said State of Virginia by said George D.

Horning, to whom said pawn tickets were also delivered, and surrendered by said messenger.

And thereupon said George D. Horning delivered to said messenger in return therefor and for each pawn ticket surrendered as aforesaid a written or printed or written and printed, paper, warehouse receipt, or ticket, designated by said George D. Horning, as a redemption certificate, to be delivered by said messenger to the person surrendering the pawn ticket issued for said article or articles, which gave the pledge number of the article or articles pledged or pawned as aforesaid, and recited that the bearer was entitled to have the same delivered to him on presentation thereof, and gave the number of the safe, and the number of the compartment therein, in which it
7 was stored, which safe was not within the State of Virginia, but in the District of Columbia, as hereinafter set forth. And said messenger thereupon delivered said redemption certificates at the place of business of said George D. Horning at 9th and D Streets, Northwest, in the City of Washington District of Columbia, to the persons thereto entitled, who paid to said Dime Messenger Service, Incorporated, for said messenger service the sum of ten cents, and thereupon presented their respective redemption certificates to the agent and employee of said George D. Horning, at his said last-mentioned place of business, and upon the surrender thereof received from said agent and employee, acting by authority from and on behalf of said George D. Horning, their respective articles of jewelry by them pledged and pawned as aforesaid, which said articles, together with all other articles accepted by said George D. Horning, upon pledge or pawn, were by him sent from his said place of business in Alexandria County, Virginia, to his aforesaid place of business at 9th and D Streets, Northwest, in the City of Washington, District of Columbia, and were by him thereafter kept throughout the continuance of the pledge or pawn thereof at said last mentioned place of business, which was used by him as a warehouse for all goods in his custody and possession upon pledge or pawn.

And others of said persons who had procured loans as aforesaid, took their respective pawn tickets hereinbefore mentioned, in person in the passenger automobiles operated by said George D. Horning, as aforesaid, and were carried and transported in said automobiles, without expense to them, by invitation of said George D. Horning, as aforesaid, from his said place of business at 9th and D Streets, Northwest in the City of Washington, District of Columbia, to his said place of business in Alexandria County, Virginia, where said other persons paid to said George D. Horning, who accepted and retained the same, the respective principal sums to each of them loaned by him as aforesaid, together with interest thereon at the rate of three per cent per month, or fractional part of a month from the respective dates of said loans to the dates of payment aforesaid, and delivered and surrendered to him their respective pawn tickets hereinbefore described, whereupon said George D. Horning delivered to each of said other persons who surrendered a pawn ticket as aforesaid, a written or printed, or written and printed paper, or ticket, or warehouse receipt, designated by said George D. Horning, as a redemp-

tion certificate, for the purpose among others, of identifying the articles pledged or pawned, as aforesaid, by the person to whom the said redemption certificate was so delivered, and of facilitating the redemption thereof, and said holders of said redemption certificates thereupon were reconveyed, carried and transported, from said place of business in Alexandria County, Virginia, to the said place of business of said George D. Horning, at 9th and D Streets, Northwest, in the City of Washington, District of Columbia, without demand of them or payment by them of any fare, compensation, or reward, for being carried and transported in said automobiles, as aforesaid and at said last mentioned place of business they surrendered their respective redemption certificates aforesaid to the agent and employee of said George D. Horning, and upon the surrender thereof
8 received from said agent and employee, acting by authority from and on behalf of said George D. Horning, their respective articles of jewelry, which together with all their articles accepted by said George D. Horning, upon pledge or pawn, were by him kept after the receipt in said State of Virginia throughout the contrivance of the pledges and pawn thereof, at said last mentioned place of business, which was used by him as a warehouse for all goods in his custody and possession upon pledge or pawn as aforesaid.

That the said Horning for a long time prior to the Fourth day of February, 1913, conducted the business of a licensed pawnbroker at said Ninth and D Streets, in the District of Columbia; at a large expense he had previously thereto installed in his said place of business eight fire and burglar-proof safes for the purpose of keeping and storing articles taken in pledge pursuant to his business as a pawnbroker; that when the Act of Congress was passed reducing the amount of interest charged from three to one per cent, the said Horning obtained a license under the laws of the State of Virginia and established an office in the County of Alexandria to conduct the pawnbroking business under said license. That all the books of account pertaining to the said pawnbroking business were kept at this office in the State of Virginia; that the only purpose for which the fire and burglar proof safes were used in Horning's office at Ninth and D Streets was to safe keep the articles pledged by persons or their agents at Horning's place of business in Virginia because there was no police protection there.

That at no time between the said first day of February, A. D., Nineteen Hundred and Seventeen, and the date of the filing of this information did said George D. Horning, or anyone in his behalf make any loan of money in the District of Columbia or receive payment in the said District of any loan made by him in the State of Virginia, or elsewhere, or accept or receive in said District any article or thing pledged to secure the payment of any loan made by him; nor did he return or surrender in said District any article or thing so pledged with him, until after the loan to secure which it was pledged had been paid in the State of Virginia, and then only on presentation at his said place of business at said Ninth and D Streets, Northwest, of a warehouse receipt or redemption certificate issued in Virginia upon the payment of the loan there, nor did he, or anyone

in his behalf, in said District of Columbia, appraise or value for the purpose of making a loan, or for any other purpose or cause to be appraised or valued, for said purpose, or any other purpose, any article or thing thereafter accepted by him in the State of Virginia as security for a loan made there.

That between said February 1, 1917, and the filing of this information the Western Union Telegraph Company and the Mutual District Messenger Co., each a corporation having a place of business in said District of Columbia, performed a like service for their customers as that performed by the said Dime Messenger Service for its customers as hereinbefore set forth.

And by reason of all of the premises, said George D. Horning did then and there, in the District of Columbia, engage in the business of loaning money on security, and did charge and receive
9 upon said money so loaned a rate of interest greater than six per cent per annum and had not first procured a license so to do, and was not then and there engaged in the legitimate business of a national bank, licensed banker, trust company, savings bank, building and loan association, or real estate broker, as defined in the Act of Congress approved July 1, 1902, contrary to and in violation of the Act of Congress, approved February 4, 1913, in such case made and provided, and constituting a law of the District of Columbia.

CONRAD H. SYME,
Corporation Counsel,
By PERCIVAL H. MARSHALL,
Assistant Corporation Counsel.

Personally appeared Charles A. Evans, this 13th day of July, A. D. 1917, and made oath before me that the facts set forth in the foregoing information upon his personal knowledge are true, and those stated upon information and belief he believes to be true.

R. B. GOTT,
Deputy Clerk, Police Court
of the District of Columbia.

June 8, 1918. Plea of "not guilty" entered and a jury trial demanded.

June 29, 1918. Verdict "guilty."

In the Police Court of the District of Columbia.

No. 523,537.

DISTRICT OF COLUMBIA
vs.
GEORGE D. HORNING.

Defendant's Bill of Exceptions.

At the trial of the above-entitled cause on June 25, 26 and 27, 1918, before the Honorable Robert Hardison, Judge of said Court,

and a jury, the District of Columbia, to maintain the issues on its part joined, offered and gave testimony as follows:

By WILLIAM L. WASHINGTON.

On direct examination:

He is a teacher and social worker, and a resident of the District of Columbia; does not know defendant. Being asked, whether defendant has a place of business in this jurisdiction, defendant by his counsel objected upon the ground that if witness does not know defendant he can not know that defendant has a place of business otherwise than by some information not his own, which objection was overruled by the Court and exception to such action taken by defendant; whereupon witness answered. "He has a place of business at 9th and D, northwest," which answer defendant by his counsel moved to strike out for the same reason that he objected to the question, which motion was overruled and exception taken by the defendant to the action of the Court. Witness proceeding: visited 9th and D Sts., Northwest, went into the office there, the office of defendant, February 3, 1917, went there for the purpose of securing a loan of money on an article of jewelry; found present two clerks, one standing behind a long desk facing 9th St., addressed him, telling him that witness wished to secure a loan on a pair of cuff links; the clerk replied that he did not make loans in the District of Columbia but if witness would go to defendant's office in Virginia he could secure a loan there; witness asked how he might secure it and the clerk said "We have a free automobile service or Dime Messenger Service to Mr. Horning's office in Virginia, either of which you can use to secure the loan," the clerk at the opposite desk he said would attend to the matter for witness; witness then addressed the latter and told him he wished to secure a loan; this clerk asked witness how much and on what kind of an article, and witness told him $5 on a pair of cuff links which witness gave him; the clerk took the cuff links and placed them in an envelope and gave witness a receipt for them, and sent the cuff links to the Virginia office, witness presumes, by the Dime Messenger Service; witness subsequently in defendant's office saw the man to whom he had given the cuff links; witness had left the office and returned within an hour and presented to the second clerk of whom he spoke the receipt and the latter gave him an envelope containing $5, together with a ticket which was presented on another date at the same office for the purpose of redeeming the pledge so that witness has not possession of the ticket. Witness does not know who the man was to whom he delivered the cuff links, might recall him if he saw him personally; does not recall whether he saw a sign of the Dime Messenger Service on the inside of the establishment, saw such a sign on the outside of the building. He presented the receipt to the second clerk of whom he spoke, who was behind the smaller desk facing the longer desk; he gave witness an envelope containing $5 and the pawn ticket, which

witness took and left the office. Witness again visited the premises at 9th and D Sts., on February 7, 1917, for the purpose of securing a loan of money on a watch charm; addressed the clerk who sat behind the long desk facing 9th St. and told him that he wanted to borrow some money on a watch charm which witness presented to him and he replied by saying that he did not make loans in the District of Columbia; after he had looked at the charm a while witness asked him if the charm was not jade and what its value was, he replied by saying he did not know what kind of a stone it was or its value, but if witness took it to the Virginia office they would tell him over there what kind of a stone it was and also its value, and witness could secure a loan there; witness asked how and the clerk said the automobile would leave about three o'clock, witness could go over in that; witness got aboard the automobile, which was standing outside of the office at that time, went
11 to defendant's office in Virginia and found there a clerk to whom witness presented the watch charm and told him he wanted to secure a loan on it; the clerk looked at the charm, took it in the rear part of the office, returned and said that he could loan witness $2.50 on it; witness asked him if it was not jade, and if jade was not valuable, and if that was the best he could do for witness; the clerk replied, yes it was jade, but jade did not have any loan value but the gold with which it was bound had a loan value of $2.50; he gave witness the $2.50 and also a ticket and witness boarded the automobile and was brought back into the city; no charge was made witness for the automobile trip from 9th and D Sts. to the Virginia office and back; on February 3, a charge of ten cents was made. Witness visited 9th and D Sts., Northwest, on April 11, 1917, and saw the first clerk that he spoke of behind a long desk facing 9th St.: witness presented to him the two pawn tickets saying he wished to redeem the pledges and paid the clerk $10; the clerk did not receive the money, he directed witness to the second clerk, saying that he would attend to the matter for witness. Not wishing to use the Dime Messenger Service, witness took free automobile again and went to defendant's Virginia office where he presented his two pawn tickets to a clerk there, telling him that he wished to redeem the pledges; the clerk went into the rear of the office and returning said that the amount which had been loaned plus the interest was $8.19, which witness paid; witness presented the tickets to the clerk who gave witness two other tickets certifying that pledges had been redeemed, two redemption tickets, and told witness to carry them to the office in Washington at 9th and D; witness returned by the free automobile service, presented his tickets there to the first clerk of whom he spoke, who delivered to witness the two articles, the watch charm and cuff links, which he took from a box in an iron safe there behind the long desk where he was standing; for the return of that property witness gave the clerk the two redemption tickets. The pawn ticket in the first instance certified that defendant had loaned to "W. Yelp," not to witness, the sum of $5 on a pair of cuff links, at the rate of 3% a month or fraction thereof; witness did not give the name of

W. Yelp but gave his own name; does not know why the ticket was given to him in the name of W. Yelp. Asked why he used the term "Dime Messenger Service," witness answered that that service was offered, he was offered the use of the Dime Messenger Service or free automobile service by the first clerk of whom he spoke.

On cross-examination:

By social worker witness means he is the resident worker of the Colored Social Settlement, 18 L St., Southwest; he went to the office at 9th and D Sts. for the purpose of securing a loan: is a social worker in the Southwest down there, and was interested in litigation pertaining to what is known as the loan shark law; is there for the purpose of elevating, helping his people, a large number of whom were patrons of the loan establishments throughout the city and certainly would gain thereby from litigation that had for its purpose the regulating of the loaning of money in the District of Columbia; he
12 saw through the papers that loans were being made, and perhaps the law was being violated, and he volunteered his services to procure whatever information or data he could to prevent such violations; went there to secure information, can't say that he went there for the purpose of using it for prosecution of defendant, if it was of any value to anyone that wanted to use it for the prevention of the violation of the law to give the information to him, intended to do that when he went there. Does not know defendant, knows that that is his office there, the business is transacted there in his name, does not know this except by way of representation, sign, saw a sign there with defendant's name on it. The place is located at the Northeast corner of 9th and D Sts., Northwest; it has two desks within, one a long desk which faces 9th St., a smaller desk faces the much longer one; counter would be a better description of the longer one, counter with a top of wire cages, very similar to a bank, behind it are burglar proof and fire proof vaults for the storage of articles, that is on the right as you enter. Behind the counter when he went in there was one person, does not know who he was, and at the other desk there was one, and there seemed to be a person there who was performing the duties of a porter at the door, and on the first occasion he saw another person there whom he judged to be a messenger; saw the Dime Messenger sign on the outside, if there was one on the inside does not recall having noticed it, does not recall having seen it on either occasion that he was there. When he went in there his first application was to the man behind the counter, he went there for the purpose of exhibiting the pair of cuff buttons with the idea of getting a loan, broached the subject to the man behind the counter and he told witness that no loans were made in that office; then the man said "we make no loans in the District of Columbia, but if you will take the articles to our Virginia office across High Bridge you can secure a loan there"; then witness asked him how he might secure the loan; this after the man told him they made no loans in the District of Columbia; the man was the first to speak, witness asked the man how he, the witness, might secure the loan after the man volunteered the information that the witness could get

it; he referred witness to the young man sitting at the desk, he said "the clerk across the way there will attend to the matter for you," does not recall whether he said "clerk" or "gentleman" or what but he referred to the person behind the desk; does not recall having seen a sign behind the desk, a sign, "Dime Messenger Service." After having thus referred him, the man told witness that he would take his commission for him and charge him ten cents for going to Virginia and coming back. Witness gave the cuff buttons to this man who gave them to a third man that witness took to be a Dime Messenger. Witness did not notice carefully whether the receipt given him for the cuff buttons in the first instance was the Dime Messenger receipt or not, does not recall perusing that carefully but knows the man gave him a receipt, did not examine it so as to know what its contents were; while he remembers the pawn ticket clearly enough he does not remember the original receipt which was the evidence given him that his article was in the possession of somebody else; witness was there for the purpose of getting information that would
13 make a case against defendant and read the paper that was brought him from Virginia very carefully but did not read the original paper that started the transaction so as to tell what was in it. Does not remember signing any paper before he got the pawn ticket and the $5, but does not deny it. With reference to the first ticket, the pawn ticket which he received at the Virginia office, the name on that ticket was written "W. Yelp"; the young man at the Messenger Service Desk who took his cuff buttons wrote witness's name in the receipt which he gave, wrote it correctly, W. L. Washington, but does not know how the error happened in Virginia, he only knows that the receipt given him contained the correct name, and when the pawn ticket was brought to him it contained the name "W. Yelp"; is perfectly sure that this name, "W. Yelp," was written, not only his initials, "W. L. W.," is absolutely certain it was "W. Yelp"; takes that to be "Yelp"; it might be read "W. L. W.," his initials, by some.

By REBAR L. TILTON.

On direct examination:

Had a transaction at the office of defendant at 9th and D Sts., Northwest, in the month of February, 1917; there was a dark-haired man in the office, she spoke to him first, he was in behind the cage, right by the left-hand side going in. She had two rings, and said she would like to get a loan on them; he said "We don't give loans at this office, but you can go over to the Virginia office. There is a car leaves in about five minutes;" she waited and took the goods over there by automobile from 9th and D sts.; when she arrived at the Virginia office she got $3 on the rings and left them there; other than the money she got a white slip, a redemption slip, to get the goods with when she returned for them; she returned to Washington by the automobile, leaving it at 9th and D; and paid nothing for the automobile service either way. In the month of April she

went to the office at 9th and D Sts. in Washington and asked for the return of her goods and they told her she would have to go to the Virginia office to get the goods, that they didn't give the goods there, that the car left in a very few minutes and she could wait; she waited a couple minutes and then the automobile went over and she handed them the white slip and asked for the rings; they said "We don't give the rings here, but you pay the money here and then you return to Washington for your property;" she paid the money and then returned in their car over to 9th and D for her rings, paying nothing for the automobile service either way; on her return here she went into the office at 9th and D Sts. and there received her rings; she saw some gentleman with dark hair, simply handed him a slip that showed she had two rings coming to her, and had no words with him, he simply returned her jewelry; he opened the safe and seemed to take it from one of the little drawers and then he removed the rings from a little paper bag, she left with him the certificate which was given her at the Virginia office.

14 On cross-examination:

When she went to Virginia to pay the loan so that she could get her rings back, she was given a paper certifying that she was paying the loan; she in fact got the money in Virginia when she borrowed it and paid it back in Virginia; what she got in Virginia in the first instance when she borrowed the money was a pawn ticket; this she kept until she was ready to pay the loan, and then she went to Virginia with the pawn ticket and paid the money and got a paper reciting that she had paid her loan, and with that paper she came to Washington and presented it as evidence that she had paid her loan and then got her rings back. When she first went about the loan she went into the office at 9th and D Sts. and saw somebody on the left and went in; on one side was the Dime Messenger, and on the other was a man supposed to be in the office of defendant, they were both dark-haired men, one was on the left and one was on the right; the dark-haired man to whom she first spoke was on the left and he told her that she could not get any loan there, told her to wait for the automobile and it would take her over to the other office. She saw the sign, "Dime Messenger," there were half a dozen signs, one about free automobiles leaving, she would not say the Dime Messenger sign was on the left; the Dime Messenger sign was on the right side, on the other side, and this man was on the left, I think as you go in. I know one is on one side and the other is on the other side, and on one of these two sides there was this man and on the other side was this Dime Messenger sign, at a little cage he sits at.

By FRANCIS D. SCOTT.

On direct examination:

Had a transaction with defendant at 9th and D Sts. Northwest. February 1, 1917, when he went there to make a loan; he found

there some gentleman behind the counter on the east side of that office room, 9th and D Sts.; went to the gentleman behind the counter and told him he would like to make a loan; he said that he made no loans there, that witness could go to their Virginia office, and there was a free automobile that ran every fifteen minutes; witness said "I have a pair of cuff buttons, if you would give me an idea what they are worth, I would know whether it was worth while to go to the Virginia office;" he said "We make no valuations here;" witness asked him about what time then the next automobile would go to the Virginia office, and he stated the time, about 4:45, and witness went down there and took the automobile, defendant's automobile, he asked the driver if that was the one that went to the defendant's Virginia office and the driver said it was; it was on the D St. side of the office; witness got in the automobile and went to the south end of the (Highway) Bridge; upon arriving there he went to a frame building there and went to the counter, told the man that he wanted a loan on his cuff buttons, laid down the cuff buttons, and asked if he could get $2 on them, the man said to wait a minute, went
15 back to the rear of the room, returned and said "Yes, I will let you have $2 on them," so witness said "All right," the man asked his name and address and wrote that down on a piece of paper and then gave witness the two dollars and a yellow ticket which was a pledge for the cuff buttons; witness returned in the same automobile to 9th and D Sts., Northwest, making no payment for the service either way. He redeemed his pledges on March 30, 1917; went to defendant's office at 9th and D Sts., and told the gentleman behind the counter he would like to pay his loan and the gentleman said "Well, you will have to take the automobile to our Virginia office," and witness did so, taking about the same route that he had taken the month before, across the Highway Bridge, and arriving there went in and presented his pawn ticket and the money, which the man behind the counter took and in return gave witness a white slip of paper called a redemption certificate, saying that witness would have to go to their Washington office at the corner of 9th and D Sts. to get his cuff buttons; witness got in the automobile, went to the office at 9th and D, presented the redemption certificate to the man behind the counter, on the east side of the room, told him he had a pair of cuff buttons, that the man in the Virginia office told him he could get them there, and so the man took the redemption certificate, looked at the number, turned to the safe and took from there in a little envelope the cuff buttons, and tore it open, and handed them to the witness. On the second visit described from 9th and D Sts. to the south end of the Highway Bridge in the automobile, and the return trip, witness did not pay anything for the automobile service.

On cross-examination:

When he secured this loan he went to the Virginia office, exhibited the cuff buttons and got the loan and a pawn ticket, and when he

wanted to get his cuff buttons back he went to the Virginia office, having been told in Washington that he could not redeem them here, that he would have to redeem them in Virginia, he went to Virginia for that purpose, in the free automobile; after he had paid the loan he got a paper, the only words on it that he remembers were "Redemption Certificate;" he got that paper for the purpose of getting back his articles, that is what the gentleman informed him, that was what it was for, when he presented it at the Washington office, and he took that paper, presenting it at the Washington office and got his cuff buttons back on March 30, 1917.

By CHARLES G. HARTMAN.

On direct examination:

Had a loan once at 9th and D Sts., Northwest, about April 2 or 3, 1917. Went to 9th and D Sts. to ask defendant about the loan; saw a clerk standing back of the counter, they had bars against the counter, and he had his watch and took it out and asked the 16 man for a loan on it, "No, not at this office, you will have to take the regular free automobile service and go to Virginia, and it will leave in about ten minutes or less, or you can use the Dime Messenger Service across there," which was right back there; witness said that he didn't want to go over there not knowing whether he could get what he wanted on his watch and would like to know something about it, but the man said he couldn't tell here but they would tell him at the office over there; and witness took the automobile and rode over there and went in the office and told the fellow that he would like to have $15 on the watch, and he gave witness the $15. This office is just over the Bridge in Virginia at a little place, the office, as near as he can tell, was the one that the clerk at 9th and D Sts. said was their office in Virginia; he does not remember that there was anything there to indicate what office it was. The man there gave him $15 in a little envelope, a little tag or piece of paper to show loan of $15 on a watch and chain; Witness got in the same automobile he had ridden over in and it never stopped until he got to 9th and D Sts. where he got out; did not pay anything for the automobile service either way. About seven or eight days later witness went to defendant's office, he had this white slip of paper and had been told that the watch would be kept at 9th and D pSts., so he went there, 9th and D Sts., and asked the clerk in the office for his watch; the clerk told him that he could not give him the watch, that he would have to go over and pay his money at the office in Virginia and that then he would get an order to come there and get his watch; he went in the automobile over there and paid his money and was told they would give him his watch; he came back in the automobile and got his watch and chain. In return for the payment of the loan he got an order to go to 9th and D Sts. office and get his watch; he went back in the same automobile that he went over in, and did not pay for the service either way. He gave the order to the same man he talked with every time he went

there; the man went right back, opened the safe and brought witness's, so he went there, 9th and D Sts., and asked the clerk in the safe for witness's watch. Witness's name was on the loan paper, the paper that was the receipt for the watch; this was given in Virginia; he thinks defendant's name appeared on the paper but is not positive; there was a piece of reading on the paper, there were names appeared on it, what names he does not know.

On cross-examination:

When he went back to Virginia and paid his loan he got a paper order certifying that he had paid the loan and thereby redeemed the pledge and that the article would be delivered to him upon demand at a certain time without storage; the paper had defendant's name on it, it told him where the watch would be redeemed, at the ware house at 9th and D Sts. in Washington, is positive about this.

By JAMES W. HAMMETT:

He is book-keeper for the Washington Post and produced issues of that paper, eleven in number, of various dates from February 5 17 to April 3, 1917, both inclusive; whereupon it was admitted by counsel for defendant that in each of the said issues there was inserted by defendant's authority the following advertisements:

"Loans

"Horning

"Rhodes, Va. (South end of Highway Bridge)

"Free automobile from 9th and D Sts., N. W."

It was also admitted by counsel for defendant that by the authority of defendant an identically similar advertisement appeared in the Washington Times newspaper, daily, from February 1, to March 13, 1917, and also in the Washington Herald newspaper throughout the period covered by the information, except as to the dates March 5, and March 7, 1917.

By CLIFTON AYERS.

On direct examination:

He is Assistant Advertising Manager of the Washington Herald and produced issues of that paper of March 5, and March 7, 1917, each of which contained the following advertisement, which was paid for by defendant as part of a general bill rendered him by the Washington Herald Company:

"Horning"

The pawnbroker's three balls underneath, Then, on one side of the pendant ball, the lower one:

"Loans"

On the other side, the same word, "Loans." Then below:

"Loans on

"Diamonds, Watches, Jewelry

"Free automobile service from northeast corner of Ninth and D Streets, N. W."

On cross-examination:

He has no personal knowledge how this advertisement got into the Herald. March 5, 1917, was the day following the last inauguration of President Wilson and the issue of that day was a special issue of the Herald, as also was the issue of March 7. In getting out this special issue incident to the inauguration, advertisements for this special edition were solicited from merchants and advertisers in the Herald in general; he could not say how this advertisement
18 was got, a young man by the name of Moran was handling defendant's account at that time; Moran left Washington about October 15, or November 1, last, and has not since returned. This particular advertisement appeared only in those two issues of the Herald, and for the rest the regular advertisement, a standing advertisement, continued right through. Both the standing advertisement and the special advertisement appeared in each of the issues of March 5, and March 7.

By EDWIN L. COCKRELL:

He is the publisher of Cockrell's Transcript, and there appeared therein on various dates between February 1, and July 13, 1917, an advertisement of defendant, which was paid for by defendant in advance; defendant paid in advance by the year which included dates referred to. Witness does not know what particular form of advertisement defendant authorized during the period under consideration; this particular advertisement was handled by Mr. England. The advertisement is as follows:

"Horning's — three balls—

"Loans

Diamonds Watches Jewelry

Free automobile service from northeast corner of 9th and D Streets N. W."

The witness was thereupon asked if the same advertisement did not appear in Cockrell's Transcript from the date of February 1, 1917, to the present time; to which question defendant by his counsel objected upon the ground that anything after July 13, 1917, was irrelevant and immaterial, and upon the further ground that there was no evidence that defendant or anyone representing him ever saw this advertisement in any issue of this paper; which objection was overruled by the Court and defendant by his counsel duly excepted to such action; whereupon the witness answered "Yes."

By CHARLES A. EVANS.

On direct examination:

He is a detective sergeant of the Metropolitan Police Department, has been connected with the Police Department about twenty-five years and with the Detective Bureau sixteen. Has known defendant about twenty years. Being asked if he knew what business defendant was engaged in prior to February 4, 1913, defendant by his counsel objected to the question upon the ground that it was irrelevant and immaterial what defendant's business was at any date before the information, which objection was overruled by the Court and defendant by his counsel excepted to such action; whereupon witness answered "Pawnbroker," and that defendant's place of
19 business as a pawnbroker was the northeast corner of 9th and D Sts. Northwest. Had known that defendant had a place of business between February 1, and July 13, 1917, at the same place, a storehouse, or warehouse as it is termed, at that corner, 9th and D, Northwest. Has visited defendant at that place between February 1, and July 13, 1917, many times; noticed there certain signs; one of them is, "Horning's Collateral Bank;" another, "Warehouse;" another, "Formerly George D. Horning's Loan Office;" another "Free automobile service to my Virginia office;" another, "Dime Messenger Service, Incorporated;" another, "The last automobile leaves for my Virginia office," giving time; and another, "No appraisement of any kind will be made or money loaned in this office other than on pledges prior to February 3, 1913," the last being a large sign, a printed sign, with defendant's name; witness saw also three gilded balls over the door on the outside; of the signs spoken of, five or six were on the outside and two on the inside, some on the 9th St. side and some on the D St. side of the building, and the warehouse sign was painted on the glass of the two doors opening on the corner. The interior of the premises is quite like a bank; there is a counter with a rail around it, a sort of woven wire rail; there are three or four little private booths at one end that used to be used when defendant was a pawnbroker there; there are about seven or eight safes in it, and prior to a couple of weeks ago there was a Dime Messenger Service in the place with a desk and rail. He has seen property taken out of the safes and placed back again after being looked at; has seen people call at the place between February 1, and July 13, 1917, has seen them come up to the counter where the clerk was and pass tickets to the clerk, who would go to the safe and hand

out property, jewelry. Defendant has another office in Virginia, South Washington, Virginia it is called, that is just over the Highway Bridge on Virginia territory. Has many times gone from the local office to the Virginia office, some times in the same automobile with people whom he saw at 9th and D Sts., defendant's automobile; defendant told him that he had three machines just to bring people backwards and forwards to his Virginia office.

On cross-examination:

Defendant's place at 9th and D Sts. is a warehouse, a storehouse, he has a clerk in charge, he has the safes; many times witness would go in to use defendant's telephone, at other times through defendant's courtesy, he has ridden in defendant's machines to Virginia and looked over books there for stolen property, defendant's clerk would give witness the number of the article and very often witness would come to Washington and show it to the clerk here, who would get it out of the safe and let witness look at it, and very often witness would look at the property in Virginia office; they have a safe there, one large one; this experience with defendant in the particular inquired of has been since the business started in Virginia in 1913. The occasion of property located at 9th and D Sts. being taken out and put back, as witness described, was
20 that it was brought out to show him, to see if it was the property he was looking for; he has seen other people go up with a ticket and pass it under the window to the clerk, and has seen tickets there, warehouse tickets calling for the property; the clerk would pass them the property and the people would pass out. The gilded balls have been there since defendant first occupied the building years ago. Being shown photographs, witness described the premises at 9th and D Sts. therefrom. In addition to the safe in the Virginia office, defendant employed a watchman, who lives with his family next door to defendant's office there. Every time witness has had occasion to look at defendant's books he found them in the Virginia office; so far as he knows that is where defendant's books are kept, that is where witness has always seen them. Since the law of 1913 went into effect he has never known of a transaction or of an appraising to be made in defendant's office in Washington; has known of such transaction being attempted in that office with the result that they did not go through, they were refused. Has had occasion on behalf of the Police Department to seek defendant's aid in the matter of appraising property with the result that it was always declined both at 9th and D Sts. and at headquarters, and defendant required that articles be taken to Virginia, where he would appraise them free of cost.

By MORRIS KRESSIN.

On direct examination:

Is secretary of the Dime Messenger Service, and was such between February 1, and July 13, 1917. The executive offices are at 712

12th St., Northwest, and between February 1, and July 13, 1917, it had a branch office at 401 9th St., Northwest, defendant's warehouse; engaged the place occupied by the branch office from defendant and paid him for it. His business there was messenger and delivery service. Between February 1, and July 13, 1917, carried messages from his 9th St. office to the State of Virginia; during that period about seventy-five or one hundred people a day would engage him in connection with the messenger service; transacted delivery service and messages sent into the city and to Virginia back and forth; the messages were sent over to the defendant's place in Virginia; carried the messages as a common carrier, public service. His business transactions covered the taking of property from 9th and D Sts., Northwest, to defendant's establishment in Virginia; people would come in at 9th and D Sts. to place their goods and redeem their goods, pay interest on their goods, and practically redeem them; a representative of defendant would come to witness's desk and say that this person called to pledge this watch; witness having the application blank for the purpose, and the person would make the application and put down the amount of money he wanted, state the article that was sent, and his name and address; witness would send the goods over to Virginia and they would place the appraisement on them and send back the money by the messenger,
21 would either send the money back upon the goods or return the goods; witness's clerk in return would give the money back to the person that made the application for the loan, and also a pawn ticket that came from Virginia. If the person making the loan wanted to redeem the property he would come to the desk and say that he wanted to redeem his property and to send over for it, and would ask witness to figure out the amount of interest, which would be done and the ticket and the name were put in an envelope and witness would give a receipt for it, enter it on his books, and give it to the messenger; the messenger would take the money and ticket to Virginia and get a redemption ticket and bring it back to Washington and give it to the clerk, who would hold it for the party when he came back, and then when the party came for his goods he was given the redemption ticket, and he in turn gave it to defendant's clerk, who would procure it from defendant's storehouse there. Valuables are stored there at the storehouse at times, watches, jewelry and things of that kind, of witness's own knowledge practically everything that was pawned in Virginia was placed in there. From February 1, to July 13, 1917, rates for taking an article into Virginia and returned with the money as stated were fixed by the Messenger Service, which usually was a ten cent rate, and was increased to fifteen cents; used to have a twenty cent rate which was later reduced to ten cents practically by command of defendant, who said that the higher rate would not be fair to his customers. Asked whether the defendant had access to his books, witness replied, "In one particular instance, between February 1 and July 13, 1917, an instance where they charged a man thirty cents for carrying an article worth two hundred dollars, and defendant being told this had been going on all the time said that it would not go on any

more, that he wanted the record of every transaction made, that there would not be any more charges above ten cents, and the rates were reduced to ten cents."

Had a talk recently with defendant at 9th and D Sts.; he informed defendant that he was called to the District Attorney's office to give evidence regarding the case, and a member of defendant's firm told him simply to give no information whatever, simply to tell them he knew nothing regarding it one way or the other. Asked if defendant examined his books recently in connection with the charge on which he was being tried, witness answered that as a matter of fact defendant requested him to give him, defendant, a leaflet out of his books, and as a matter of courtesy witness did so, defendant said he wanted it as evidence in his case; wanted to know whether there would be anything to implicate him in the case, whether there would be any record showing his customers. Witness keeps a record of the customers for his own file, and maintained a receipt which is signed by the customer when receiving the articles from the Messenger Service. Had a conversation with defendant in February, 1918, witness took up the matter of rent, and said it would be necessary to increase his rate considering the revenue he got out of it, said that he felt that they were maintaining the service at a loss; defendant said
22 he was awfully sorry but he would let the rent go; witness had not paid the rent and defendant's clerk in Virginia asked why, and witness said that was understood by defendant and him, and witness went to defendant and asked him about it; defendant denied it at the time but finally said he did not recall whether or not he had the conversation with witness about that and said the rent would have to be paid until after his case was over with, and then he said "We will talk about it later on;" he said the case was coming up and he would have to protect himself fully for the case and therefore the rent would have to be paid.

On cross-examination:

The Dime Messenger Service has been in business since 1908, its main office has been at 717 12th St. Northwest, since 1912, first established a branch office June 5, 1913, at 9th and D Sts., the only branch office it ever had. It is a family corporation composed of his mother, brother and himself; defendant has no interest in it and never had; it does quite an extensive business and had such prior to opening the branch office; paid no rent for the branch office for seven or eight months or possibly a year, but from then until lately paid rent at $5 per month; at first did not do business there to any great extent but eventually got to doing quite a good business there, mostly for those persons who employed them to go over to Virginia, but to some extent for other persons who would come in. At first charged ten cents to take a message from 9th and D Sts. to Virginia, and in March, 1918, raised it to fifteen cents; defendant complained of this and it was the cause of some little friction between the Service Company and defendant; defendant didn't have anything to do with their business but he interfered with its rates and therefore controlled the rates, in

other words, if they had not continued to charge the rate defendant thought his customers ought to pay, he would ask them to leave and put somebody else in their place; the Company was not serving defendant but his customers, and witness thought the matter of rates should be left between the Company and its customers. They had a sign there at that corner, "Dime Messenger Service," on the outside and also one on the inside, and one desk at which generally sat a clerk employed and paid by the Company; witness himself at times sat there, and besides the clerk they had two messengers; the clerk, sometimes witness himself, and sometimes somebody else would give these articles to the messenger to go er and then come back and report. Back of this desk was the sign up on the wall "Dime Messenger Service." When the service received from anyone who came there an article to be pawned, the Service became personally responsible for that article and continued so until the return and delivery of the pawn ticket, and also if one of its messengers went over to get a warehouse certificate, the Company was responsible for that and for its delivery to the man, so that as between the Company and the customer the Dime Messenger Service was responsible to the customer, and during the time covered by the information all of the messengers of the Service were bonded. The process was this: someone
23 would come to that office with a view to making a loan, he would be told that he could not make the loan there, that he could not have his goods appraised and he could not know how much loan could be made, and the Dime Messenger Service would undertake to act as messenger for the applicant and take his application over to Virginia and have it acted on there; defendant had nothing to do with that until it reached Virginia; then when the Service received an article, the man wanting to get money on it was told that he could not make any application, could not have the article appraised there, that he could not be told there how much he could get on it, but that the article had to go to Virginia and had to be delivered to the Virginia office; the application was made at the office of the Messenger Service which, as a Dime Messenger Service, took the application from the customer, and the Service would act as his messenger to make the application over in Virginia; as the agent and representative of the man who wanted to borrow the money, the Service took the article over to Virginia or sent it over by his messenger; the Service would give a receipt to the man who wanted to borrow the money, and at the same time the man would give the Service a written application on a printed form that would be filled out, and the Service or its messenger would take it over with the blank signed by the man—not necessarily signed by him, sometimes the man would ask the Service to make out the application, and the Service would give him the receipt as evidence hat it had his article; the Service was responsible for the articl til it returned the article, or instead of returning it got the money that the man wanted to borrow and the pawn ticket that represented it; then when the Company's messenger would come with a pawn ticket and the money, the man would surrender this receipt to the Company, which, in turn, would give him the money and the pawn ticket; before the Service

would give the man the money with the pawn ticket, he had to surrender the Company's receipt, and also to sign a paper showing that he had received the money from the Company; that concluded the transaction; nobody had anything to do with paying the Messenger Service except the man who was making the loan, and it was in his behalf that the Company's messenger went to Virginia, made application for the loan and negotiated the loan; if upon taking an article over to Virginia the messenger was informed that they would not lend the desired amount on the article, it was brought back and delivered to its owner and the Company would take back its receipt, and in addition protect itself by taking a receipt from the man, showing that the Service had returned the article without any loan; in every case, whether the loan was made or not, the Service exacted this latter receipt as its discharge, because as a common carrier holding itself out to the world, it was responsible to every man who entrusted his stuff with it to have it returned or else returned in the form of a loan and the pawn ticket; that is the relation the Service had to the business down there at their corner while it was there. When it came to a redemption of the article, if the borrower came there to 9th and D Sts., he was told that he could not get the article, he could
24 not redeem it there, but would have to go over and redeem it in Virginia by paying back his loan and interest over there, and the Service took the money that was due, principal and interest, and would go over to Virginia and pay it for the borrower, and in return get this warehouse redemption paper and bring that back to the man and deliver it to him and acquit itself of any responsibility, taking a receipt for the article; so that the relation of the Dime Messenger Service to the transaction began with giving a blue slip as a receipt for the article, going over to Virginia and making the application for the borrower and in his behalf over in Virginia, getting the money and the pawn ticket and bringing it back to him, taking the blue receipt and handing him a white receipt, and there the transaction stopped until the man came to redeem the article, then when he came to redeem it, the same thing was done with reference to his paying the Company the money and interest, itself taking the money over to Virginia and paying it over there on his account for him and on his account, getting the redemption ticket and then returning it to him, and if he chose, he could carry this around in his pocket for thirty days or present it and get his article, just as he pleased, he had the privilege of leaving the article without taking it out after he had redeemed it for thirty days without being charged storage. Referring to the sheet or leaflet given by witness to defendant, it was a blank sheet, leaflet, with nothing at all written on it; defendant said he wanted to take it up with his counsel and see what the leaflet had on it; it was in fact a blank sheet and witness showed it to defendant's counsel who told witness to go — the District Attorney and tell the evidence as it is, and in that connection witness showed counsel the sheet and explained it to him, recognized the sheet as presented by counsel saying that the writing thereon is his handwriting and that he wrote it right under the eyes of defendant's counsel; defendant said that the system would have to be changed, that there was too

much red tape as far as the records were concerned, and after defendant's counsel told witness to go to the District Attorney and tell everything without reservation, witness did so, there is no question about that, and the sheet shown witness is the identical one he used in explaining to defendant's counsel about entries in the Company's book.

The application blank referred to by witness was printed at his Company's expense and was its property; defendant told him to devise it, told him what to write, these forms were printed at the expense of the Dime Messenger Service and used by it in carrying these articles over to be pawned, witness filled in the blanks according to the instructions of the customer, who would tell how much money he wanted, etc. The form is as follows:

25 "Established 1907 Bonded Messengers

Phones Main 5120-5121

"Dime Messenger Service
"(Incorporated)

"717 12th Street Northwest

"Phones: Main 5120 and 5121
"Main 4086

"Branch Office: Corner 9th and D Streets, N. W.

"WASHINGTON, D. C.,.....191

"Mr. George D. Horning,
Highway Bridge,
Virginia.

"DEAR SIR:

"Please send me $.....(Dollars) or as near as possible on enclosed articles ..-.....

"Name .....
"Address .....

"Age.
"Height.
"Color."

Then would follow a description of the article, then the man would sign his name and address or witness would do it for him, and that was delivered by the man to the messenger, who took it over as the thing to show to the office when he got over there; if the transaction was satisfactory, the messenger would come back with the money, and if it was not satisfactory, he would come back with the goods, so that instead of carrying the application over by word of mouth, the messenger carried it on this blank that was filled out in accord-

ance with the instructions of the customer. The Messenger Service has no longer a branch at 9th and D, it was given up about ten days ago: we did not move out over night, we closed our business down Friday and moved the office next morning; didn't say anything to defendant about that until after it was done, moved everything away from there that belonged to the Company, signs and all the Company didn't feel particularly satisfied with regard to the whole transaction, there was friction between the Company and defendant, and one morning without any notice to him the Company just moved out and has stayed out ever since.

On redirect examination:

The blue slip and the white slip were forms of the Dime Messenger Service paid for by it; the printed matter on the application form was dictated by defendant; he directed witness to have
26 those applications made. Referring to additional loans on pledges already with defendant, which people retain tickets for, if a person had got $5 and wanted $3 more, the application made therefor was sent to Virginia, the original application was made to Virginia and when the customer came in he made an application to us and we in turn took the number of the ticket, the number from the pawn ticket and gave it to defendant's clerk, who took the goods out of storage, gave us the goods, we took the goods and the ticket and sent them to Virginia for appraisement, and then they either sent back the money requested or as near as possible to that amount, making an additional loan on the same article: such additional loans were made between February 1 and July 13, 1917.

On recross-examination:

Can't recall any particular ones but knows there were a great number of them, we handled them the same as we did the loans and redemptions, or partial redemptions: the only difference between the original transaction and the additional transaction was that in the original transaction the property was in the actual custody of the borrower and would be delivered by him to witness, and in the case of the additional loans the property had again to be taken over to Virginia to see whether it would bear extra loan; it would be taken over by us only it was sent through us. With reference to preparing the application form, does not recall that he started to prepare a printed form for his convenience in taking over these articles to Virginia, and that Mrs. Horning and Mr. Marks who were there at 9th St. assisted him in revising it; he had in view making the application and he presented that to defendant, who corrected it and gave it back to witness; it may be possible that it was Mrs. Horning and Mr. Marks who changed witness's language so as to have it read this way, but it was given to witness by defendant; witness originally had a form in view; they would not agree to it and witness handed it to them and it came back to him in this form and he had it printed as being his intention as to the manner in which he would carry these over.

And there the District rested.

And thereupon the defendant, to maintain the issues on his part joined, offered and gave evidence tending to show as follows:

By HOWARD H. ENGLAND.

On direct examination:

Was employed by Mr. Cockrell, publisher of the Transcript, April, 1915, until March, 1917; had to do with insertion of the advertisement in the Transcript for defendant; called at defendant's office in Virginia several times to secure advertisement and finally got it; defendant authorized it, that is, he told witness to get a copy of the advertisement from another paper, which he did, and turned it in to the office, to the printer, to put the advertisement in the
27 paper; does not remember the paper he got the copy from, it was one of the papers here in Washington bearing defendant's advertisement, copied that, as he supposed, and turned it in to the Transcript. Did not show it to defendant or anybody connected with him; at the time he turned it over to the Transcript he believed he was turning over an accurate copy of the other advertisement.

On cross-examination:

Defendant told him to copy an advertisement in another papet and insert it in Cockrell's Transcript, and that witness did.

On redirect examination:

Can't say that he did, did not read it until after he put it in the paper; that is he did not compare advertisements; can't say it was an exact copy; thought it was, and passed it into the Transcript and never compared what was in the Transcript to see whether it was in accordance with the other; did not read it.

On recross-examination:

Has no personal knowledge to-day that that was not an accurate copy that he turned in.

By BENJAMIN A. LEATHERMAN.

On direct examination:

Is warehouse clerk at corner of 9th and D for defendant, has been so employed since January, 1915. Does not remember any one of the witnesses Washington, Tilton, Scott or Hartman applying at defendant's office at 9th and D Sts., between February 1, and July 13, 1917, for the purpose of making a loan; during this time does not think there was any other person employed as clerk there besides himself, was relieved at the counter only at vacation time and sickness. What he and anybody else did about the place was simply storing defendant's goods The office, or warehouse, is a large build-

ing, it has eight safes in it, seven of which are used for storage purposes, warehouse purposes only, the other is used for almost anything you might put in there that is not necessary to store for any length of time, we use it for cash sometimes. Informs anyone that comes there that no loans are made in the District, whatever, it is against the law, all loans are made in Virginia; always tells people asking to have articles valued that it is against the law to value articles in the District and furthermore he has no knowledge of the value of articles; respecting inquiries as to how much might be loaned on an article he invariably tells people it is against the law to make any appraisal whatever, and accordingly refuses; people frequently display articles to get a loan on them, but never handles the articles, simply tells them it is against the law for any valuation to be made there, or for any loan to be made there; there follows that they usually ask him how to get to the Virginia office, and he
28 tells them there is a free automobile service, that they can take the street car, sometimes they ask if there is any way to send over; in that case he refers them to a Dime Messenger Service, there are several in the city; at one time when the Dime Messenger Service had desk room in the office he referred them across the room to the Dime Messenger Service, has referred them to the Western Union and the Postal Telegraph; upon being informed by him that no loan and no valuation could be made and no information given of the amount loaned in the District, but that any business of that kind must be transacted in Virginia, the would-be borrowers would ask how they could get to Virginia, and he informs them, they usually take the car or use the Messenger Service at their own discretion, and after any such person had employed a messenger or taken the car and left the office witness had no further relation whatever to him. The articles stored there in the warehouse get out only by warehouse receipt coming from defendant's Virginia office; upon presentation of these warehouse receipts to him he delivers the articles called for and files away the original redemption certificates, they are kept in his possession, he is responsible for them. He does not handle the pawn tickets, has nothing whatever to do with them; the extent of his responsibility is what he has related as to what he does when persons come to the office in the first instance and what he does when they come back with the redemption tickets. During the time he has been employed at defendant's office he has known of no single instance in which an application was received, or a valuation made, or an estimate given of the amount to be borrowed. He has no interest in defendant's business, is simply a salaried employee, has had nothing whatever to do with any advertisements, nothing whatever to do with the automobiles, except to see that they leave the office, and has had nothing whatever to do with the Dime Messenger Service or its messages.

On cross-examination:

Is still in defendant's employ, and was in his employ from February 1, to July 13, 1917. During that period of time persons would

come to defendant's place of business at 9th and D Sts. and say that they desired to secure loans on articles of personal property; then he would say to them that no loans were made in the District of Columbia and that in order to obtain money they would have to go to defendant's office in Virginia; they would occasionally ask him to appraise articles or to tell them whether or not they could expect to get a loan of a certain sum when they got to defendant's Virginia office, and he would tell them that they made no appraisement, and none were made in the District of Columbia, and they could go to defendant's office in Virginia from 9th and D Sts. in one of his automobiles free of charge, and would also say to them that if they desired they could utilize the Dime Messenger Service and send over their pledges if they were about to attempt to secure a loan, or their pawn ticket if they were about to attempt to redeem it, and in a great many instances they would avail themselves of the Dime
29 Messenger Service; when persons so did he would not tell them that if they would come back within a reasonable length of time—an hour or something of that sort—they would get a report or reply, he would simply call in the chauffeur and tell him to make the trip. Couldn't say how frequently these machines left during the period of time inquired of, the cars left sometimes at regular periods and sometimes at irregular periods; we always had two, sometimes three, machines.

When borrowers wanted to redeem their loans many of them came in during the period inquired of, seventy-five or one hundred, probably more or less, a day about the matters he has been talking about. They would come in there and say to him that they wanted to redeem their pledges and he would tell them that could not be done in the District of Columbia, that they would have to go to defendant's Virginia office, he would also tell them that if they wanted to go there in one of defendant's automobiles free of charge, they might do so, that if they wanted to use the Dime Messenger Service it was there at their disposal, and they would pay whatever the charge was, ten cents, he believes; of course they were at liberty to go in any way they pleased, they could walk over there if they wanted; numbers of them would go over in the free automobile service, and numbers of others would utilize the Dime Messenger boys, in either instance if the individual borrower went to defendant's Virginia office he paid off his loan there with the interest and got this paper, redemption certificate, he did not get his article pawned over there in Virginia but got this paper, a warehouse certificate; if he sent over his money and the pawn ticket by the Messenger Service he would get the certificate back by the messenger; then the redemption certificate, obtained either by the person himself or through the messenger and delivered to him, he would bring to witness, who would get from defendant's safe at 9th and D Sts. the article that had been pawned and delivered it to the man who had redeemed it or the man who had presented the certificate, and witness would file the paper. That was the manner of conducting the business during the period we are talking about. During the same time the signs shown by the photographs produced were in existence and in

the places indicated, except the sign. "Former Loan Office, George D. Horning," he couldn't say about that one. Among the people who came there during this period of time some were the same coming in time after time, regular customers. At the time in mind persons who had already secured loans on pledged articles from defendant would desire additional loans on the same pledges and come there to 9th and D Sts. and communicate their wishes in this respect; he would refer them to the Virginia office, the same as in making the original application; if they applied to the Messenger Service, he had no further dealings with the parties at all; the pledges would be sent over by the Dime Messenger Service to defendant or his clerk there: witness gave them to the messengers to be sent to the Virginia office to be appraised there to see whether they could stand the additional loans; lots of people redeemed pledges in that
30 way, requested that the goods be in Virginia to be redeemed; we did not pay the Messenger Service for this. A good bit of the business of communicating to defendant in Virginia the application and paying off of loans and getting the redemption certificates was transacted by this Dime Messenger Service.

On redirect examination:

In the matter of these additional loans, taking one case as illustrative of all, a borrower had made a loan and the pledge was in the vault for safe keeping and he would desire a further loan upon that same pledge, witness would take that article, put it in an envelope, addressing it to defendant or his clerk, and send it to the Virginia office through the automobile or Dime Messenger Service; it never got out of our possession, only with the redemption certificate, so that when he would send this article over he would send it by messenger on account of the office, to be delivered to the defendant or his representative over there, never into the possession of the customer and never into the possession of anybody except for defendant.

By Mrs. GEORGE D. HORNING:

She is the wife of the defendant. Helped to make the paper, the application form, testified to by the witness Kressin. Mr. Kressin prepared a form which he thought was good and asked us if we thought it was all right. She and a Mr. Marks just revised his form.

By HARRY C. COLUMBUS:

On direct examination:

Is chief clerk for defendant and has been for about six years; was employed by defendant when he was conducting business here in Washington and before he went to Virginia; has been employed by him constantly at Virginia; the Virginia office was opened April 21, 1915; it is situated at the south end of the Highway Bridge, known as South Washington, Virginia. It is a one-story frame building, twenty feet wide and about thirty feet long, equipped inside with a counter, four private offices and booths where is grill

work in front of each booth, doors in each booth, and the longer counter at the front of the office has grill work over the top; at the back of the office there is a long desk that has a partition of glass, and behind that partition the bookkeepers work; we work on the other side of the counter behind the grill work. Recognizes photographs produced, and they accurately represent that office. Respecting the manner of conducting the business in the Virginia office, a person coming there for a loan will hand the article to one of the clerks, will ask for a certain amount of money; we will take the article back to the appraising room, look at it, and tell the customer what we think it is worth as a loan, no one makes the appraisement but defendant or witness; if the customer is satisfied with the amount offered, we write him a pawn ticket, describe the article pawned or pledged upon that ticket, give him the money and put the article in the office. Recognizes two pawn tickets shown him
31 for goods pledged at South Washington, Virginia, both of them paid for and canceled; in the one Number 246809, the handwriting is defendant's; the initials, "W. L. W." indicate the man's name; the initials only go on the ticket, that is the uniform practice; this ticket is as follows:

"Address all mail orders South Washington, Va.
"Licensed and bonded under the laws of Virginia.

"No. 246809. $5.00 ——
100

"Office of George D. Horning, Broker.

"South End,
New Highway Bridge,
Phone Connections.

SOUTH WASHINGTON, VA.

Feb. 3, 1917.

"This Certifies, That I have loaned to.....
..... "W. L. W. .....
..... "five ..... Dollars
100
on ..... C. Buttons ....., as a pledge, with interest at three (3) per centum per month or fraction thereof.

"I will not be responsible for loss or damage of any of the goods, articles or things covered by this pledge, by fire, robbery or other casualty, and am not to be held responsible in any way if said goods, articles or things, or any of them, are delivered to the bearer of this ticket.

"If this pledge is not sooner redeemed it will be sold after the expiration of twelve months from the date hereof, or in case of renewal, twelve months from the date to which interest shall be paid.

"GEORGE D. HORNING.

"No Goods Sent C. O. D. Personal Checks not Accepted.

"Office Hours: 8.30 A. M. to 5.30 P. M.

"Ticket Good For One Year From Date.

"90358"

The Number 90358 is the Dime Messenger's Number. What is meant by the statement on the ticket that defendant will not be responsible if the goods are delivered to the bearer of the ticket is that all goods are delivered on the original ticket unless the customer notifies us that the ticket has been lost and we issue a memorandum of that original ticket; that will stop the delivery on the original ticket so that it is up to the borrower to notify us in case his ticket is lost, otherwise we can deliver the goods to anyone who presents the ticket. When a pledge is redeemed we take the ticket and the money from the customer and issue him a redemption cer-
32 tificate, which is redeemable at the warehouse at 9th and D in Washington; "when we deliver this redemption certificate over to the borrower in Virginia, the transaction of the loan and pledge is closed;" the borrower gets the article itself at the warehouse at 9th and D unless he requests it to be sent to Virginia and delivered over there; we have lots of cases where people redeem goods at the Virginia office and ask us to have the goods sen*d* to Virginia, as they are going up the State, or something like that, and are not going back to Washington; we have lots of cases like that, some of them say they don't want to go back to the Washington office, and when the request is made by the customer to have the pledge sent over to Virginia that is uniformly done. Witness has nothing at all to do with the Washington office, only in case of sickness or vacation he has worked there; his custom there has been this exactly: if a customer applied to him while he was there at the Washington office for a loan, he would say, "No loans are made in Washington, but we make loans at our Virginia office," and then the customer would say "Where is the Virginia office?" and he would tell the customer at the south end of the Highway Bridge; customer would ask him how to get over there and he would say "We have free automobile service" that would take him over and bring him back free, that he could go and get a street car at the Mount Vernon Station at 12th and Pennsylvania Avenue, or he could use the Messenger Service; has always told persons asking to have articles valued in Washington that "We cannot make any valuations in Washington as it is against the law;" lots of times that question has been asked him, but he always answered as above. At no time since the new law went into effect has he for defendant at any place in the District of Columbia received an application for a loan, or valued any article, or told any person how much he could get on an article, what he has related is the extent of what he has done every time and in every instance at the Washington office. Respecting the testi-

mony of the witness Kressin that a certain member of defendant's firm told him to give no information to the District Attorney's office, simply to tell them he knew nothing regarding it one way of the other, Kressin came to witness and said "Mr. Harry, I have been called to the District Attorney's office," witness said "Is that so, Morris?" he said "Yes, what will I say to them?" and witness said "Well, Morris, listen; answer any questions they put to you but don't voluntarily tell them anything unless they ask you," and witness told him another thing, said "You better call up Mr. Davis and ask him what to do," he said he would do so; that was all there was to that incident. Respecting defendant's advertising, he advertised in practically all the local papers; witness is familiar with the nature of the advertisement, recognizes the one in the Washington Post of February 5 as the one with which he has been familiar; never at any time knew of any other advertisement than that being inserted for or on account of defendant in any paper. Respecting an advertisement in the Washington Herald of March 5 and March 7, 1917, of a different character from that, it must have been on the third of March that one of the representatives of the Herald called up defendant's office—witness received the message at the Virginia
33 office—and said they were going to run a display advertisement in the paper that would come out on the 5th or 4th of March, in connection with the inauguration; witness said they could do that, to copy the running advertisement that ran in the paper daily, witness supposed they did; has seen the regular advertisement in the Herald, never saw any other than that; did not look at the issues of March 5 and March 7 to see anything about that advertisement, whether it was the same or different; what he authorized was to put the regular advertisement in that paper in display form, did not authorize any change in it, and until today didn't know there had been any change. Defendant is a regular licensed pawnbroker in Virginia and has been ever since he started over there.

On cross-examination:

The rate of interest defendant charged is as shown on the pawn tickets examined here, three per cent a month or fraction thereof. It has occurred at times that there has been an absence in the Washington office and someone would take the place of the absent man, witness did that, sometimes defendant's wife did. When Leatherman first came to work for defendant it was at the Virginia office, and he was sent from there to take charge of the Washington office, he never came to the Virginia office about business matters while in the Washington office; at times defendant came over to the Washington office and at other times he was in the Virginia office; there was telephonic communication between those offices and the telephone was frequently used between the offices in matters of defendant's business, the business witness has been telling about on the stand. Has seen Cockrell's Transcript and defendant's advertisement therein; was acquainted with the advertisement carried in Cockrell's Transcript from February 1 to July 13, 1917.

On redirect examination:

Never noticed advertisement in Cockrell's Transcript close enough to say whether it conformed to the regular advertisement or not, could not tell the wording of it at all; had no idea d endant's advertisement was in there, doesn't believe he ever read it in his life, particularly every line of it; so far as he knew it was not in any sense different from the ordinary advertisement; defendant advertised generally, and so far as witness had any information, advertised always in the same way.

By defendant.

On direct examination:

Is the defendant in this case. Prior to the Act of February 4, 1913, was a licensed pawnbroker in the District of Columbia; opened his place in Virginia April 22 or 23, 1913. He anticipated that this Act would become a law; before it was signed sought the ad-
34 vice of counsel about moving his entire business to Virginia and conducting it under a Virginia license; went to Virginia, bought a lot, contracted for a building and office; about continuing to maintain a warehouse here in Washington was advis that he could do business in Virginia, and when the time came about the pledges that those goods were his own absolutely in bailment, that he had a right to store those goods any place he chose to so long as he was in a position to deliver those goods back to their original owner, regardless of whether it should be Alexandria, Baltimore, Chicago or Washington; selected Washington as his storehouse because he had an office there that is well equipped for taking care of those pledges. Has never made an appraisement, accepted an application, made a loan, or accepted any interest whatsoever under this new Act in the District of Columbia. Is a regular licensed and bonded pawnbroker in Virginia and has been ever since he went there. Makes about eighty per cent of the appraisements, writes probably about twenty-five per cent of the tickets, and probably ten or fifteen per cent of the redemptions on the ticket-. On the ticket Number 246809 what is written in ink is his handwriting; the initials "W. L. W." stand for W. L. Washington; it has been his practice to write on the pawn tickets the initials only of borrowers. Has absolutely nothing to do with the application blank testified to by the witness Kressin. Whenever a pawn was redeemed in Virginia the party would pay the loan and interest and he would issue a warehouse certificate and give it to him and tell him he could receive his goods at the warehouse; in lots of cases people requested their goods to be brought over there; we delivered them in Virginia as well as in Washington. Occasionally goods were kept in the safe over in Virginia, but as a rule he used the warehouse in Washington, stored the goods in his warehouse in Washington because he had better protection there for his money than anywhere else. Until this morning never saw the large advertisement in the Washington Herald and never knew that the advertisement in Cockrell's Transcript was in

any wise different from his general advertisement; remembers the request made of him by the witness England for permission to put that advertisement in Cockrell's Transcript; England came to the Washington office and solicited the advertisement first; the meeting in the Washington office was by accident; witness told England there was no business transacted in Washington and he would have to talk to witness in Virginia; England called him up over the phone to get an appointment to see him at some time in Virginia and he would give witness a special rate if he would pay for a year's contract in advance. Witness accepted the proposition and gave England instructions to copy one of the newspapers and run his advertisement; besides that never had any relation to that advertisement at all.

On cross-examination:

From February 1 to July 13, 1917, was familiar in a way with the operations of the Washington office, knew what that office did in a business way during that period of time; hasn't the faintest
35 idea how many persons a day would visit the office during that time for the purpose of making inquiries about loans. Hasn't any idea how many applications he received in Virginia from the Washington office through the Dime Messenger Service during that period of time, taking loans and redemptions together would say from fifty to seventy-five per day, doesn't know. The first he knew about the application form testified to by the witness Kressin, the latter said he wanted witness to make up an application; witness replied "No, I wouldn't do that, I don't want anything to do with your affairs. My advice is to see your attorney and have your attorney see your papers. I will not have anything to do with it." Kressin did not to his knowledge submit a form to somebody in his office. Kressin handed him that form after, he thinks it was, in this style here; he said, "I haven't anything to do with that. You had better talk with your attorney." Never passed on that form whether it was a good form or a bad form, and only advised him to see his attorney, that is all; doesn't know about Kressin submitting a form prepared by him to defendant's wife and someone else in the office and their changing it in some particulars. Examined his advertisements in some of the newspapers; after placing them in the Washington Herald, Times and Star, he looked at those, the little advertisements; has not seen Cockrell's Transcript in a year and a half, he thinks; Cockrell came to him and asked him about the summons that had been served on him and had his Transcript there, that was the first witness saw of it for eighteen months; has never read that advertisement in Cockrell's Transcript. During the period of time between February 1 and July 13, 1917, if a man had a pawn — with him and wanted to borrow more money on it, that pledge would be sent over from the Washington office to the Virginia office and appraised to find out whether it would stand the increased loan, each case was an individual case; that means this, that if a man had a watch already in pawn and came to the Virginia office today and said he wanted to get an additional loan on it, witness would tell him he would have to wait until he got the goods

and witness would send over to the warehouse for the goods, and say that if they would stand the additional loan he would make it; how the goods would be brought over would depend upon whether the goods were sent by the Dime Messenger Service or came to Virginia direct; the Dime Messenger man being told by the customer that he wanted to get an additional loan, would tell witness's man in the office that he wanted that article to take over to Virginia and would let the messenger have it; this was in accordance with witness's instructions and by his authority; the goods would be taken to Virginia and appraised over there and he would decide whether to make the additional loan or not; the goods were not sent back by the Dime Messenger Service, they were brought back by witness later on.

By HARRY C. COLUMBUS (recalled):

Respecting this additional loan matter on which defendant was just interrogated, if a customer came to the office for an addi-
36 tional loan on an article that was already pledged, he would send the goods to Virginia to be reappraised, they would go over in the custody of the chauffeur if the customer went over in the automobile, otherwise the article was given to the messenger if the request came through the Messenger Service; the goods were addressed to either defendant, if he was there in the office, or witness, they never left witness's possession or defendant's after they reached Virginia until they went back that night by them, "We carried the goods back ourselves," so that the process was that whoever was in the Washington office sent the articles to witness or defendant and then they would deal with the problem over in Virginia, and after they had decided one way or the other, it was they who returned the goods to the Washington office, the goods were never out of their possession at any time.

And there the defendant rested; and the foregoing is the substance of all the evidence offered and given at the trial.

And thereupon the District by its attorney prayed the Court to charge the jury as follows:

I.

"The jurors are instructed that if they find, from the evidence, beyond a reasonable doubt, that the defendant, George D. Horning, between the dates charged in the information, that is to say, between February 1st and July 13th, 1917, not having a license from the District of Columbia as a pawn broker, maintained an office at 9th and D Streets, Northwest, in the District of Columbia, to which office persons applied to secure loans, and exhibited jewelry or other property which they desired to deposit for security of such loans; that they were told at such office, by defendant's employees, that the jewelry or property would not be valued or appraised for loan purposes in the District of Columbia, and that no loans upon the security

thereof would be made in the District, but that they might either send the articles to defendant's office in the State of Virginia by messenger of the Dime Messenger Company, or take them in person to the Virginia office free of charge in one of defendant's passenger automobiles; that when articles were sent by messenger, a receipt for the articles was given by the Messenger Company and the articles were taken to the Virginia office where they were appraised and a pawn ticket and the sum of money loaned delivered to the messenger, who returned to the Washington office and delivered the money and the pawn ticket to the borrower; that when the borrower was transported by defendant's automobile, the money and pawn ticket were delivered to him at the Virginia office, and he was returned by said automobile either to the Washington office or to any other point in the District to which he desired to be taken, and that when the borrower desired to pay the loan, he presented the money and pawn ticket at the Washington office where he was directed either to send them by messenger to the Virginia office or take them himself in one of defendant's said automobiles, and that a warehouse re-
37 ceipt or redemption ticket was given to the messenger to be delivered to the borrower, or to the borrower direct, as the case might be, which receipt was presented by the borrower at the Washington office, where he received his property; and that defendant charged and received for said loan a rate of interest greater than six per centum per annum, then the defendant is guilty as charged in the information.

II.

"The jurors are instructed that if they find from the evidence, beyond a reasonable doubt, that defendant conducted in the District of Columbia any one or more of the acts essential to the complete transaction of the business of loaning money upon security at a greater rate of interest than six per centum per annum then the defendant is guilty of the offense charged in the information.

III.

"The jurors are instructed that they are not at liberty to consider whether or not the business of conducting pawn shops in the District of Columbia is an advantage to the community or whether or not such establishments should be permitted in the District, or the rate of interest they should be allowed to charge and receive. That the Congress of the United States has legislated for the District of Columbia upon this subject, and the jurors must not be influenced in their verdict by any consideration except whether the defendant is, in fact, engaged in the District of Columbia, in the business of loaning money upon which a greater rate of interest than six per centum per annum is charged on any security of any kind, without first obtaining a license so to do.

IV.

"That the District of Columbia is not required to prove that defendant did not have a license to carry on the business in question, but that the burden is upon the defendant to show that he had such license, and, in the absence of proof by him, the jurors must presume that he had no such license."

And the defendant by his attorney prayed the Court to instruct the jury as follows:

I.

"You are instructed that to constitute an application to the defendant for a loan within the meaning of the information, it is not sufficient for the applicant merely to communicate his desire or request in that behalf to the defendant, but it is necessary further for the defendant to entertain the expression of such desire or request with a view to acting favorably upon the same, in accordance with the proposal of the applicant, and that the mere expression of the desire or request of the applicant and the declination of the
38 defendant so to entertain the same would not constitute an application as aforesaid, within the meaning of the information.

II.

"You are instructed that upon receiving from any person a pledge as security for a loan to such person by the defendant, the latter immediately become vested by law with a special property in such pledge as against all the world, including such person himself, until his redemption of the said pledge by repayment of the loan made thereon, and further, that the defendant became to such person an insurer of the safety of the said pledge, and its due return upon repayment of the loan, and accordingly that it was the right of the defendant, during the continuance of the loan and until its repayment, to keep the said pledge, wheresoever and in such depository as in his judgment, proper; and without regard to the locality of such depository."

"III.

"If you find from the evidence that in making use of his Washington premises as a warehouse or place of storage for his pledges given him the defendant so did for the purpose of safely keeping the said pledges for his own protection against their possible loss, and to the end that he might have them for redelivery to his customers on the repayment by them of their loans and for no other purpose, you are instructed that such use of the said premises did not constitute the carrying on by the defendant of the business of a pawnbroker or any essential incident thereto."

"IV.

"If you find from the evidence that in making use of his Washington premises as a warehouse or place of storage for pledges given him the defendant so did for the purpose of safely keeping the said pledges for his own protection against their possible loss, and to the end that he might have them for redelivery to his customers on the repayment by them of their loans, and for no other purpose, you are instructed that such use of the said premises did not constitute the carrying on by the defendant of the business of lending money in the District of Columbia, or any essential incident thereto."

"V.

"You are instructed that upon the whole evidence in the case your verdict should be not guilty."

To the granting of the first of the said instructions prayed by the District defendant by his counsel objected as follows:

"I want now to go on the record as objecting to this instruction, because, first, it assumes that the defendant has an office in the District of Columbia, to which persons applied to secure loans
39 within the meaning of an application for a loan, as has been submitted to the Court in my first request, and by the information itself; and, in the next place, it assumes that each or any one of these recited facts assumed in the instruction is essential to the carrying on of the business by the defendant in the District of Columbia, as charged in this information; and I request the Court, if it contemplates granting this instruction, to caution the jury, by appropriate language, what is meant by an office where persons applied to secure loans as recited in the instruction, and also to qualify the instruction by telling the jury that they must find that some one of these matters done in the District of Columbia was essential to the carrying on of the business of lending money, as charged in the information. Otherwise, your Honor will say that each and every one of these is essential, and that I respectfully submit you cannot do."

And the Court refused to grant each and all of the instructions prayed by defendant and to the Court's ruling in so doing the defendant by his attorney in each instance excepted, and the Court in each instance noted the exception in its minutes.

And thereupon the Court of its own motion and without granting as prayed any of the instructions asked — either the District or the defendant, charged the jury as follows:

"Gentlemen, if you believe from the evidence, to the exclusion of a reasonable doubt, that George D. Horning did, between February 1, and July 13, 1917, without a license to do so, engage in the business of lending money in the District of Columbia on security at a greater rate of interest than 6 per cent, you should find him guilty as charged in the information. Unless you so believe, you should find him not guilty.

"It is conceded, gentlemen, that the rate of interest charged was more than 6 per cent, and it is conceded that he had no license to operate in the District of Columbia, and the only question for you to determine is: did he engage in the business within the District of Columbia?

"There is no contradiction here in the testimony of these witnesses as to the acts and transactions engaged in and had in the management of this business that was conducted, whether it was conducted here or in Virginia.

"As I say, there is no contradiction in the testimony of the witnesses. They testified to a certain course of dealing, and if the testimony of those witnesses is true, gentlemen, and if these acts were done and these transactions had as recited by them, you are instructed, as matter of law, that they constituted an engaging in business in the District of Columbia.

"As to what constitutes an engaging in business, that is not a question for you gentlemen to determine in this case, because you are instructed that if these witnesses told the truth about the matter that was an engaging in business in the District of Columbia, within the meaning of the law.

"So the only question for you to decide is, do you believe the statements of these witnesses to be true, and their statements
40 are uncontradicted. If you believe the statements of these witnesses about it, then your verdict should be one of conviction, and you should find the defendant guilty. If you do not believe their statements about it, of course you are at liberty to acquit the defendant, and should acquit him, if you do not believe their statements.

"What I have said to you in previous cases with respect to a reasonable doubt applies in this case, as in all cases. A reasonable doubt is such a doubt arising upon evidence as would influence a reasonable man as to matters affecting his own personal interest. If you have such a doubt as that as to the guilt of this defendant, you should give him the benefit of the doubt and acquit him.

"In this case, as in all other criminal cases, the defendant is presumed to be innocent until proven guilty beyond a reasonable doubt, and this presumption of innocence accompanies him throughout the trial until removed by such proof of guilt.

"I think that is all I need to say to you in this matter here. The facts have been portrayed here to you by these witnesses. The Court of Appeals has laid down the law in the case; so that the law in the case is not an open question.

"If you believe the testimony of these witnesses who have recited these facts to you here, it is your duty, then, under these instructions, to bring in a verdict of guilty in this case."

Whereupon the defendant by his attorney excepted as follows, and the Court noted the same in its minutes: "I except, if your Honor please, to the instruction as given to the jury, that if they find the facts as recited by your Honor, their verdict should be guilty."

Whereupon on June 26, 1918, at the hour of five o'clock P. M., the jury retired to consider of its verdict.

Thereupon on the following day, June 27, 1918, the jury having been recalled to the court room, the following occurred:

"The Court: The law makes the jury the sole judges of the credibility of witnesses and the weight of the evidence and where there is conflict between the evidence for the Government and the evidence for the accused it is your exclusive province to weigh the evidence and determine where the truth lies, and no court or other person is permitted to intrude into your province and control your judgment in the matter but we have not a case of that kind here. In the case at bar, there is no conflict in the evidence upon any material point. The witnesses for the Government detail a course of dealing by the defendant. The defendant himself and witnesses introduced by him corroborate the witnesses for the Government and show the same course of dealing. The defendant cannot be heard to say that he himself and his witnesses are not telling the truth. Therefore, there is really no issue of fact for you to decide. You are not authorized to capriciously, arbitrarily say that the
41 witnesses for the Government and for the defendant are not telling the truth, and that the course of dealing of the defendant is other than as described by the witnesses.

"The Court of Appeals has decided that such course of dealing is a violation of the law. That decision is binding upon me and upon you alike. It is my duty to be controlled by it. It is your duty under your oaths as jurors to accept as correct and be governed by the exposition of the law which I give you. In a criminal case the Court cannot peremptorily instruct the jury to find the defendant guilty. If the law permitted I would do so in this case.

"In conclusion, I will say to you that a failure by you to bring in a verdict in this case can arise only from a willful and flagrant disregard of the evidence and the law as I have given it to you, and a violation of your obligation as jurors.

"Mr. Davis: I except, if your Honor please, to this as amounting to a peremptory instruction to the jury to render a verdict, and give notice that on that ground I shall take the usual course as prescribed by the statute.

"The Court: Of course, gentlemen of the jury, I cannot tell you, in so many words, to find the defendant guilty, but what I say amounts to that. The facts proved before you are in accord with the information. The Court of Appeals has said that that constitutes a violation of the law; and that is all there is in the case.

"Mr. Davis: If your Honor please, I repeat my objection and exception, and feel it my duty to say to your Honor that this very question has once been decided by the Court of Appeals of the District of Columbia. The case of Masters, I think, is the name of that case. The decision in that case amounts to saying that what your Honor has said is an invasion of the province of the jury, and on that ground I except and again give notice of my purpose.

"The Court: As I have told you, gentlemen, even if I am in error, it is your duty to accept the law as I have given it to you.

"Mr. Davis: I again except, if your Honor please, on the ground that the only effect of this can be coercion of the jury, and I give them this notice.

"The Court: Retire, gentlemen.

"(The jury again retired to consider of its verdict.)

"Mr. Davis: If the Court please, I now desire to make a motion.

"The Court: You may state your motion.

"Mr. Davis: The jury having been returned by the Court to the court room——

"The Court: The jury room.

"Mr. Davis: Thank you. (Continuing:) —to the jury room for further deliberation, following the proceedings just had, counsel for the defendant requests that it be recalled to the court room for the purpose of the motion now to be made.

"I move the Court to discharge this jury from further consideration of this case upon the ground indicated and stated in the exceptions just taken, and that the jury be recalled in order that this motion may be made in its hearing.

42 "The Court: The motion will be overruled.

"Mr. Davis: And I note an exception and give notice as aforesaid of my intention to apply to the Court of Appeals for a writ of error according to the form of the statute in such case made and provided.

"The Bailiff: One moment, Mr. Davis. The jury is ready.

"(The jury here reentered the court room and returned a verdict of guilty.)

"Mr. Davis: I request that the jury be polled.

"The Clerk: All who are in favor of the verdict of guilty say 'aye'.

"Mr. Davis: Pardon me. I asked that each juror's name be called and be asked if his verdict is guilty.

"(In accordance with the above request, the jurors were individually interrogated as to whether their verdict was guilty, and each of the twelve answered in the affirmative.)

"The Court: You are discharged, gentlemen, from further consideration of this case.

"Mr. Davis: I will make a motion, if your Honor please, in due form, in accordance with the rules, for a new trial, and I ask that the accused be excused until further order of the Court.

"The Court: Very well. That may be done.

All the foregoing proceedings were had and exceptions taken and noted before the jury retired to consider of its verdict, and upon and at the time of the taking by defendant of each of the said exceptions and the ruling of the Court in each instance, notice was given by the defendant, by his attorney, of his intention on account thereof to apply for a writ of error to the Court of Appeals of the District of Columbia, in accordance with the statute and rule of Court in that

behalf made and provided. And the defendant prays the Court to sign this, his bill of exceptions, to have the same force and effect as to each of the said exceptions as though each were set forth in a separate bill of exceptions, which is granted; and the Court accordingly signs this, the defendant's bill of exceptions, to have the force and effect aforesaid, now and then, this 28th day of September, A. D. 1918.

ROBERT HARDISON, *Judge.*

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA

vs.

GEORGE D. HORNING.

Washington, D. C., Monday, August 19, 1918—

1 o'clock P. M.

The Court met pursuant to notice.

Present on behalf of the District of Columbia, Mr. Ringgold Hart and Mr. P. H. Marshall.

Present on behalf of the defendant, Mr. Henry E. Davis.

43 The Court (Judge HARDISON): Gentlemen, I have just finished reading the record in the Horning case and I am now ready to give you my conclusions in the matter. This case has given me a great deal of trouble. I have never decided a case with which I had more trouble than I have had with this one. I do not think I have ever practiced a case in which I have had more trouble to satisfy my own mind as to what ought to be done than I have had in this case.

A careful reading of the testimony taken on the trial shows conclusively that there is no conflict in the testimony of the witnesses for the Government and for the defendant upon any essential proposition. The testimony of the defendant even more fully than the testimony of the Government shows the same course of dealing as outlined in the testimony of the Government witnesses because, of course, the defendant has more intimate knowledge of what actually happened and of the way he conducted his business than had the witnesses of the Government. And so it comes down to a question of what the Court has power to do and should do in a case of that sort.

I have read with a great deal of interest the case that Mr. Davis cited to me, the case decided by our Court of Appeals here, I think the name being the Masters case. That case, is the nearest one to this case that I have been able to find. But that case is not this case. My search failed to show that the exact question presented in this case has ever been decided. Of course the books are full

of cases in which the question was just what the judge might with propriety say to a jury where there was an issue for a jury to try.

The judge has to be very careful as to what he may say to a jury where there is an issue of fact. He has to be very, very careful and the courts have gone to great length to guard the rights of people accused of crime. They have said to a judge that he has to keep his hands off when it comes to intruding into the domain of the jury in passing upon an issue of fact.

When you read the Masters case you will see that they reversed the conviction in that case upon the ground that there was some evidence which raised an issue of fact. The question came up in that case as to the admissibility of evidence as to the intent with which the defendant acted. The Appellate Court decided that the trial court erred in not admitting that testimony. In that state of the case, for the purpose of the opinion, the record stood as if that testimony had been admitted, and with that testimony in there certainly was evidence there as to whether or not the man had committed an offense. That opinion, and the language used in it, is based upon that fact. When you read any case the only safe rule of interpretation is to read it in the light of the question that was involved. You have to read and interpret the language in the light of the facts that are involved in that case and the issue presented for decision.

There is a very interesting old case here, a Supreme Court case, that I take it you gentlemen have seen, and that is the case of Sparf and Hansen versus the United States, decided in 189-, 156 U. S., p. 51. In that case two men were charged with murder com-
44 mitted on the high seas. They were brought into the jurisdiction of the United States District Court in Massachusetts and were tried there. They were convicted and sentenced to death. They took an appeal and the main error relied upon was that the trial judge failed to charge the jury with reference to manslaughter. He charged them upon the trial that these men were guilty, on the facts in the case, of murder or nothing, and that the jury did not have the right to find them guilty of manslaughter. There is a Federal statute which provides that "In all criminal cases the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment, or the defendant may be found guilty of an attempt to commit the offense so charged, provided that such attempt be itself a separate offense."

The defendants contended that it was the duty of the trial judge to give them the benefit of that statute and charge the jury, if they thought they were guilty of manslaughter, that they could find a verdict of manslaughter and not one of murder. Of course that is a very vital thing to a man charged with a *domicide* and it amounts to much more to him than any right that was involved in a case of this sort here. The difference there was between a death sentence and a short term of imprisonment. That case went to the Supreme Court and was very fully presented there. The opinion of the Court was by Mr. Justice Harlan, and the Court held that where the evidence raised no issue as to manslaughter that no right of the

defendants was prejudiced by the Court taking that issue away from the jury and telling the jury that they could not find the defendants guilty of manslaughter but that they should be found guilty of murder or nothing. Two or three dissenting opinions were written in that case and they go back into antiquity, and review the question that is involved in this case to a certain extent, that is, trial by jury, the origin of trial by jury and just what a judge may do and what he may not do in charging. They give the causes for the law and [illegible] it originated. That case is as near to this case as any case I have been able to find (other than the Masters case) although it is not this case by a good deal.

Now I have heard the rule expressed that with us the Court is the judge of the law and the jury are the judges of the facts. That is not quite accurate because as a matter of fact in both civil and criminal [illegible] the court is the judge of whether or not there are any facts. If there are any facts then it is the duty of the jury to take those facts, resolve them and decide any issue that may arise. But it is a question of law always whether or not there is any evidence to be submitted to a jury, a question of law just as much in a criminal case as in a civil case—whether there is any evidence for a jury to act upon, and of course that, like other questions of law, is reviewable by an appellate court. If the trial court errs in saying that there are no facts to go to a jury when in fact there is a question of fact that should go to the jury, that error is reviewable by an appellate court and can be corrected, just as the Appellate Court can review and correct other errors.

45 It is laid down in this case that I have referred to that the Court cannot peremptorily instruct a jury to find a defendant guilty, but when we consider this case and the other cases which I have read, it looks to me that about what the law forbids a judge to do is to peremptorily direct a verdict of conviction, and that is about all as the way of charging a jury he is absolutely forbidden to do when the evidence raises no word of fact. Now the question comes up: is there any other limitation upon his power in charging a jury in a criminal case if there is in fact no issue for a jury to determine? Of course if there is an issue, if there is any evidence to support a plea of not guilty, be it but slight evidence, the Court has got to say nothing that will tend to coerce or improperly influence a jury; but if there is in fact no evidence raising an issue, what prejudicial error is there in anything he may say so long as he gives the jury to understand that he is not compelling them to return a verdict of guilty, and that such a verdict is optional with them. What harm is done if the Court is right in assuming that there is no evidence? If he is wrong in that assumption of course that is an error of law which can be corrected by a reviewing court. But if he is right in assuming that there is no evidence, what rule of law is there forbidding him to say anything that he may say—although it would be highly improper if there was evidence—just so he stops short of compelling a jury by a peremptory instruction to bring in a verdict of guilty. That the law says he cannot do. I have never found any case, although I have searched with diligence, that has decided the exact question here. I have never found a case

that has reversed a conviction for an improper remark made by a judge where there was no evidence to sustain the defense. That is the case we have here, according to my view of it. It is a unique case. I have never been able to find any like it, if I am right in assuming that there is no evidence here to support the defense. In the Masters case, reading into the record made in the trial court the evidence that the Court of Appeals said ought to be in, there was an issue for the jury to try and of course it was improper for the trial judge to say anything relative to the proof that might be construed as coercion or as compelling them to return a verdict that otherwise they might not have returned. If there is no evidence at all it strikes me that if the Court stops short of peremptorily saying to the jury that they must find a defendant guilty, he has not committed an error, and if it is an error it seems to me that at most it is a harmless error of which the defendant cannot complain. I appreciate the delicacy of the question presented here, because the right of trial by jury is one of the treasures of the Anglo-Saxon race; it is a thing we lay greater store by than almost any other right and the law guards it very zealously, but nevertheless it is the duty of the judge to say whether there are facts forming an issue for a jury to decide. It is his duty to decide that question in a criminal case, just as in a civil case, because it is his duty, where there is no evidence to convict, to direct a verdict of acquittal.

While I am not certain about this, and while I dislike to be put in an attitude of doing anything that may be considered
46 arbitrary, and while I think it would be much better for some superior court to announce the rule that I have announced than for a police court to do so, I am obligated to act upon it according to my conscience, and if I am right in assuming there is no evidence here to sustain the defense and a careful reading of that record confirms me in that opinion, it being my duty to see the law enforced it seems to me that my obligation to charge the law required me to say just about what I did say to the jury. It would perhaps have been better if I had said it when I first charged the jury instead of waiting until they had stayed out as long as they did.

That is the best I can get out of the case. I would much rather not have been placed in the position to have to hold this way, but that is my honest conviction about it and it affords you the best possible case to test this very important question. I very much hope, and I suppose you will, take this question to the Court of Appeals and try it out. I think a decision should be had on this vital point where the question is fairly and squarely presented to the Court.

Therefore, gentlemen, I let this motion for a new trial be overruled.

Mr. Davis: I desire to formally note an exception to the action of the Court.

It is ordered by the Court that this opinion be filed and made part of the record in this case.

ROBERT HARDISON,
Judge of Police Court, D. C.

September 28, 1918.—Defendant sentenced to pay a fine of $50.00.

In the Police Court of the District of Columbia.

No. 523,537.

DISTRICT OF COLUMBIA

vs.

GEORGE D. HORNING.

Assignments of Error.

The Court erred as follows.

1. In refusing to grant defendant's prayer No. I for instruction to the jury.
2. In refusing to grant defendant's prayer No. II for instruction to the jury.
3. In refusing to grant defendant's prayer No. III for instruction to this jury.
4. In refusing to grant defendant's prayer No. IV for instruction to the jury.

47 5. In refusing to grant defendant's prayer No. V for instruction to the jury.

6. In instructing the jury as in and by the Court's charge given of its own motion appears.
7. In instructing the jury that the only question for it to decide was whether it believed the statements of the witnesses to be true and that such statements were uncontradicted.
8. In instructing the jury that there was no issue of fact for it to decide in the case.
9. In instructing the jury that, if the law so permitted, the Court would peremptorily instruct the jury to find defendant guilty.
10. In charging the jury that a failure by it to bring in a verdict in the case could arise only from a willful and flagrant disregard of the evidence and the law as given it by the Court and a violation of its obligation as jurors.
11. In peremptorily, in effect, directing the jury to find a verdict of guilty.
12. In over-ruling defendant's motion to discharge the jury from further consideration of the case, upon the ground indicated and stated in the exceptions taken by defendant and appearing in and by the bill of exceptions.

Respectfully submitted,

HENRY E. DAVIS,
Attorney for Defendant.

In the Police Court of the District of Columbia.

No. 523,537.

DISTRICT OF COLUMBIA

vs.

GEORGE D. HORNING.

To the Clerk:

The defendant designates the following to constitute the record on the writ of error allowed him in the above-entitled cause.

1. The information.
2. Plea of not guilty.
3. Verdict.
4. Defendant's bill of exceptions.
5. Opinion of Court over-ruling motion for new trial.
6. Judgment of sentence.
7. Assignments of error.
8. This designation.

HENRY E. DAVIS,
Attorney for Defendant.

48 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Cam Howard, Deputy and Acting Clerk of the Police Court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 74 inclusive, to be true copies of originals in cause No. 523,527 wherein the District of Columbia is plaintiff and George D. Horning defendant as the same remain upon the files and records of said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, the City of Washington, in said District, this 7th day of October, A. D. 1918.

[Seal of Police Court of the District of Columbia.]

CAM HOWARD.
Deputy and Acting Clerk Police Court, Dist. of Columbia.

[Endorsed:] District of Columbia Police Court. No. 3213. George D. Horning, Plaintiff in Error, vs. District of Columbia. Court of Appeals, District of Columbia. Filed Oct. 8, 1918. Henry W. Hodges, clerk.

49 Tuesday, December 3rd, A. D. 1918.

* * * * * * *

No. 3213.

GEORGE D. HORNING, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA.

The argument in the above entitled cause was commenced by Mr. Henry E. Davis, attorney for the Plaintiff in Error, and was continued by Mr. P. H. Marshall, attorney for the Defendant in Error, and was concluded by Mr. Henry E. Davis, attorney for the Plaintiff in Error.

50 In the Court of Appeals of the District of Columbia.

No. 3213.

GEORGE D. HORNING, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA.

Opinion.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

This case is here in error to the Police Court of the District of Columbia. Plaintiff in error, defendant below, was convicted of the crime of doing business as a pawnbroker in violation of the act of Congress of February 4, 1913 (37 Stats. L., 657).

This is the second time this case has been before us. The former consideration arose from an order quashing the complaint on the ground that it did not state a cause of action. 47 App. D. C., 413. The complaint was there held sufficient, and the case was remanded for trial. The complaint contained a complete statement of the facts relied upon by the District as constituting the offence. On trial, defendant and his witnesses testified to the commission of all of the acts charged, which had been held by this court to amount to a violation of the law. Defendant, by his testimony, admitted the facts as completely as he could have done by a plea of guilty.

The single assignment of error worthy of consideration relates to the instructions to the jury. The court, after charging as to presumption of innocence, reasonable doubt and the elements entering into the offence, said: "There is no contradiction in the testimony of the witnesses. They testified to a certain course of dealing, and if the testimony of those witnesses is true, gentlemen, and if these acts

were done and these transactions had as recited by them, you are instructed, as matter of law, that they constituted an engaging in business in the District of Columbia, within the meaning of the law.

So the only question for you to decide is, do you believe the
51 statements of these witnesses to be true, and their statements are uncontradicted. If you believe the statements of these witnesses about it, then your verdict should be one of conviction, and you should find the defendant guilty. If you do not believe their statements about it, of course you are at liberty to acquit the defendant, and should acquit him, if you do not believe their statements. * * * If you believe the testimony of these witnesses who have recited these facts to you here, it is your duty, then, under these instructions, to bring in a verdict of guilty in this case."

After the jury had deliberated for several hours, they were recalled to the court room, and the court further charged them as follows: "The law makes the jury the sole judges of the credibility of witnesses and the weight of the evidence and where there is conflict between the evidence for the Government and the evidence for the accused it is your exclusive province to weigh the evidence and determine where the truth lies, and no court or other person is permitted to intrude into your province and control your judgment in the matter but we have not a case of that kind here. In the case at bar, there is no conflict in the evidence upon any material point. The witnesses for the Government detail a course of dealing by the defendant. The defendant himself and witnesses introduced by him corroborate the witnesses for the Government and show the same course of dealing. The defendant cannot be heard to say that he himself and his witnesses are not telling the truth. Therefore, there is really no issue of fact for you to decide. You are not authorized to capriciously, arbitrarily say that the witnesses for the Government and for the defendant are not telling the truth, and that the course of dealing of the defendant is other than as described by the witnesses. The Court of Appeals has decided that such course of dealing is a violation of the law. That decision is binding upon me and upon you alike. It is my duty to be controlled by it. It is your duty under your oaths as jurors to accept as correct and be governed by the exposition of the law which I give you. In a criminal case the court cannot peremptorily instruct the jury to find the
52 defendant guilty. If the law permitted I would do so in this case. In conclusion, I will say to you that a failure by you to bring in a verdict in this case can arise only from a willful and flagrant disregard of the evidence and the law as I have given it to you, and a violation of your obligation as jurors."

Upon an exception by counsel for defendant to the charge as given, the court further stated: "Of course, gentlemen of the jury, I cannot tell you, in so many words, to find defendant guilty, but what I say amounts to that. The facts proved before you are in accord with the information. The Court of Appeals has said that that constitutes a violation of the law; and that is all there is in the case."

The charge was excepted to by counsel for defendant as amount-

ing to a peremptory instruction to find defendant guilty. In the Federal courts, in both civil and criminal cases, the trial judge may express his opinion in respect of the testimony, and it will not be error so long as he cautions the jury not to feel obliged to be bound by or to follow his suggestions. In Simmons vs. United States, 142 U. S., 148, 155, the court, considering the limitations upon a trial judge in expressing his opinion of the evidence to the jury, said: "The only other exception argued is to the statement made by the judge to the second jury, in denying their request to be discharged without having agreed upon a verdict, that he regarded the testimony as convincing. But at the outset of his charge he told them, in so many words, that the facts were to be decided by the jury, and not by the court. And it is so well settled, by a long series of decisions of this court, that the judge presiding at a trial, civil or criminal, in any court of the United States, is authorized, whenever he thinks it will assist the jury in arriving at a just conclusion, to express to them his opinion upon the questions of fact which he submits to their determination, that it is only necessary to refer to two or three recent cases in which the judge's opinion on matters of fact was quite as plainly and strongly expressed to the jury as in the case at bar. Vicksburg etc. Railroad vs. Putnam, 118 U. S.,
53 545; United States vs. Philadelphia & Reading Railroad, 123 U. S., 113; Lovejoy vs. United States, 128 U. S., 171."

In the present case the trial justice made it clear that the jurors are the sole judges of fact; that he had no power to peremptorily instruct a verdict of guilty, and that, notwithstanding any opinion he might express, the ultimate decision of guilt or innocence resided in the jury. But the foregoing charge must be read in the light of the case before us. It would hardly be contended that the charge could be upheld in a case where there was a material issue of fact for the jury to pass upon, or in the present case had defendant elected to refuse to testify, as was his right, and rely upon the presumption which the law would thereby raise for his protection. But he waived even this right and unqualifiedly admitted every charge made against him, apparently relying upon the dereliction of the jury for relief. It is in this particular that the case of Masters vs. United States, 42 App. D. C., 350, relied upon chiefly by counsel for defendant, differs from the present case. We held in that case that error was committed in refusing to admit certain testimony, which, if admitted, would have presented a sharp issue of fact for the jury. Here, it is conceded there is no issue of fact, and the present decision, it must be remembered, rests solely upon that unique situation.

How far may a defendant rely upon the exercise of arbitrary power by a jury and complain if the jury disappoints his expectations? Defendant's guilt was admitted. There was no fact left in dispute. The duty of the jury was to find him guilty. They had the arbitrary power, but not the right, to return a verdict of not guilty. In Sparf and Hansen vs. United States, 156 U. S., 51, the defendants were charged with the crime of murder in the first degree. The court instructed the jury that there was nothing in the evidence to reduce the crime, if one was committed, below the grade

of murder. This was assigned as error, on the ground that the court had invaded the province of the jury. Section 1035,
54 Revised Statutes of the United States, among other things, provides that "in all criminal cases the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offense so charged: Provided, That such attempt be itself a separate offense." Commenting upon the charge in view of this provision of the statute, the court said: "The court below assumed, and correctly, that section 1035 of the Revised Statutes did not authorize a jury in a criminal case to find the defendant guilty of a less offense than the one charged, unless the evidence justified them in so doing. Congress did not intend to invest juries in criminal cases with power arbitrarily to disregard the evidence and the principles of law applicable to the case on trial. The only object of that section was to enable the jury, in case the defendant was not shown to be guilty of the particular crime charged, and if the evidence permitted them to do so, to find him guilty of a lesser offense necessarily included in the one charged, or of the offense of attempting to commit the one charged. Upon a careful scrutiny of the evidence, we cannot find any ground whatever upon which the jury could properly have reached the conclusion that the defendant Hansen was only guilty of an offense included in the one charged, or of a mere attempt to commit the offense charged. A verdict of guilty of an offense less than the one charged would have been in flagrant disregard of all the proof, and in violation by the jury of their obligation to render a true verdict. There was an entire absence of evidence upon which to rest a verdict of guilty of manslaughter or of simple assault. A verdict of that kind would have been the exercise by the jury of the power to commute the punishment for an offense actually committed, and thus impose a punishment different from that prescribed by law."

There was no lawful power vested in the jury to acquit defendant. In convicting him, no right of his was violated, since he had no right to an acquittal. The right of trial by jury guaranteed
55 by the Constitution is the right to a lawful trial where the jury is governed in its deliberations by the law as given by the court. Every general verdict is compounded both of law and fact—the law as given by the court, and the facts as adduced from the witness stand. The jury has the physical power to disregard both, but not the moral right. In the absence of any issue of fact, as here, only a question of law remains; and while the jury has the arbitrary power to disregard it, one failing to profit by such a disregard of duty is not in position to complain. "Every person accused as a criminal has a right to be tried aaccording to the law of the land, the fixed law of the land; and not by the law as a jury may understand it, or choose, from wanton-ess, or ignorance or accidental mistake, to interpret it." United States vs. Battiste, 2 Sumn., 240.

The right guaranteed the citizen is to be tried according to the fixed law of the land, and not according to the mere guess of a

jury in the exercise of purely arbitrary power. If denied the former, he has suffered an injury from which the law will grant relief: if granted the latter, he is the recipient of a gross miscarriage of justice; but, if denied it, he has been deprived of no legal or constitutional right of which he may be heard to complain.

The court in charging the jury that a failure to return a verdict of guilty could be due only to "a willful and flagrant disregard of the evidence and the law * * *, and a violation of their obligation as jurors," stated the truth, and at the same time the law of this case. It is clear that, unless the jury violated their obligations as pointed out by the court, they could not acquit the defendant. The jury, however, was not divested of the freedom to exercise arbitrary power. On the contrary, it was expressly told that it possessed that power. Hence, in order that we may reverse the case, it must appear not only that the jury was not permitted to exercise arbitrary power and "disregard the evidence and the principles of law applicable to the case," or that some other right of defendant has been infringed. The record fails to disclose
56 either. It is not apparent, therefore, that any error prejudicial to defendant was committed.

The judgment is affirmed with costs.

Affirmed.

57 Monday, March 3rd, A. D. 1919.

* * * * * * *

No. 3213, January Term, 1919.

GEORGE D. HORNING, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA.

In error to the Police Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Police Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Police Court in this cause be and the same is hereby affirmed with costs.

Per MR. JUSTICE VAN ORSDEL.

March 3, 1919.

58 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 57, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals, in the case of George D. Horning, Plaintiff in Error, vs. Dis-

trict of Columbia, No. 3213, January term, 1919, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals at the City of Washington, this 6th day of March, A. D. 1919.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

59 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the District of Columbia, Greeting:

Being informed that there is now pending before you a suit in which George D. Horning is plaintiff in error, and District of Columbia is defendant in error, No. 3213, which suit was removed into the said Court of Appeals by virtue of a writ of error to the Police Court of the District of Columbia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Appeals and removed into the Supreme Court of the United States, do hereby command
60 you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the seventeenth day of April, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 27,010. Supreme Court of the United States. No. 924, October Term, 1918. George D. Horning vs. District of Columbia. Writ of Certiorari. Court of Appeals, District of Columbia. Filed Apr. 24, 1919. Henry W. Hodges, Clerk.

61 In the Court of Appeals of the District of Columbia.

No. 3213.

GEORGE D. HORNING, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA, Defendant in Error.

It is hereby stipulated by and between the above-named parties, plaintiff and defendant in error, that the certified transcript of record in the above-entitled cause, accompanying the petition of the plaintiff in error to the Supreme Court of the United States for the writ of certiorari in the said cause, shall and may be taken as and for a return to the said writ granted and issued by the said Supreme Court of the United States on the 17th day of April, A. D. 1919.

HENRY E. DAVIS,
Attorney for Plaintiff in Error.
CONRAD H. SYME,
P. H. MARSHALL,
Attorneys for Defendant in Error.

(Endorsed:) No. 3213. George D. Horning, Plaintiff in Error, vs. District of Columbia. Stipulation as to return to writ of certiorari. Court of Appeals, District of Columbia. Filed Apr. 24, 1919. Henry W. Hodges, Clerk.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify, in obedience to the writ of certiorari hereto attached and returned herewith, the foregoing to be a true and correct copy of the stipulation of counsel filed in said cause on the 24th day of April, A. D. 1919.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, District of Columbia, this 24th day of April, A. D. 1919.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES, *Clerk.*

62 [Endorsed:] File No. 27,010. Supreme Court U. S., October Term, 1918. Term No. 924. George D. Horning, Petitioner, vs. District of Columbia. Writ of certiorari and return. Filed April 24, 1919.